UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

THE STATE OF TEXAS,

Plaintiff,

v. No. 5:96CV91

THE AMERICAN TOBACCO COMPANY, et al.,

Defendants.

The Oral Videotaped Deposition of WILLIAM KIP VISCUSI, taken at the request of the Plaintiff, pursuant to Federal Rules of Civil Procedure, on Friday, August 22, 1997, at 9:03 a.m., at 1700 Lincoln Street, Suite 4000, Denver, Colorado, before Ginger G. Preston, Registered Professional Reporter and Certified Shorthand Reporter in and for the State of Texas (22492).

COURT COST: $_____

TO BE PAID BY: Plaintiff

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A P P E A R A N C E S

For the Plaintiff: Williams Bailey, 8441 Gulf Freeway, Suite 600, Houston, Texas 77017. By Guy Fisher.

For the Defendant Philip Morris, Incorporated: Arnold & Porter, 1700 Lincoln Street, Suite 4000, Denver, Colorado 80203. By Tim Atkeson.

Also Present: Guy Tubbs

I N D E X

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WILLIAM KIP VISCUSI,

sworn by the Court Reporter, testified as follows:

EXAMINATION BY MR. FISHER:

Q. Sir, will you please state your full name for the record? 9:03:26

A. W. Kip Viscusi, where W. stands for William. 9:03:30

Q. And where are you presently living, sir?

A. [DELETED]

Q. How long have you lived in [DELETED]

A. Since the middle of July.

Q. Are you married, sir?

A. No. 9:04:00

Q. Have you ever been married?

A. Yes.

Q. How was your marriage terminated?

A. Divorce.

Q. What year did you get married?

A. I'm not really sure. I think it's 1972.

Q. Okay. And what year did you get divorced?

A. The separation, I think, was in 1994, 1993. And divorce was probably 1996 or -- yeah, '96. 9:04:30

Q. Did you and your wife have any children?

A. Yes.

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Q. How many children did you have?
A. Two.
Q. Is it a boy and a girl, two girls?
A. One of each. 9:05:00
Q. How old is your son?
A. 14.
Q. How old is your daughter?
A. 16.
Q. Are they living with you or their mother?
A. Mother, but I also have a house in [DELETED] -- will have a house in [DELETED] so we split the time.
Q. By your last answer, I take it your 9:05:30
ex-wife lives in [DELETED] is that correct?
A. That's correct.
Q. What part of [DELETED\ does she live in?
A. [DELETED]
Q. Is she currently working?
A. No. 9:06:00
Q. Are your children in high school?
A. They are now.
Q. Okay. And they go to high school in [DELETED]
A. That's correct.

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Q. Who do you work for at this time?
A. Harvard Law School. 9:06:30
Q. What is your position with Harvard Law School?
A. I'm the John F. Cogan junior professor of law and economics and the director of the program on empirical legal studies. 9:07:00
Q. Who is John F. Cogan?
A. He's an alumnus of Harvard Law School who donated $3 million or so for the chair. And he was the head of the capital campaign for Harvard Law School.
Q. What did John F. Cogan do for -- I guess as a profession? 9:07:30
A. Made money.
Q. In what ways?
A. I think he's a finance guy.
Q. Okay. How long have you been the -- been at Harvard as a professor of law and economics?
A. As a permanent tenured person, I went on the payroll July 1st, a little over a year ago. And I was a visiting professor before that. 9:08:00
Q. Okay. What courses do you currently teach at the Harvard Law School?
A. On empirical methods for law and

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economics, a seminar on risk in environmental regulation, a course on the economics of regulation and anti-trust, and another seminar dealing with -- using quantitative methods in legal contexts. 9:08:30

Q. What is your current salary at Harvard Law School?

A. Do I have to tell you?

Q. Yeah. Well, I mean, do you know it?

A. Yeah. Yes, I do. 9:09:00

Q. Okay. What is your current salary?

A. The base nine months salary --

Q. Okay.

A. -- I think it's 172,000 and something, maybe 500, somewhere in there.

Q. That's close enough.

Before joining the Harvard Law School faculty, where -- where were you employed? 9:09:30

A. Duke University.

Q. And at Duke University, were you a professor of law and economics?

A. No. I was a professor of economics.

Q. How long was your stay at Duke University?

A. I believe it was about eight or nine years. 9:10:00

Q. What courses did you teach at Duke University? Did you teach the same courses every

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year or did your courses vary at Duke University from year to year?

A. They were the same courses every year and it was law and economics and public finance.

Q. Would it be an accurate statement to say that in the eight or nine years at Duke University, you -- you taught two courses, law and economics and public finance, or were the courses that you taught related to those two disciplines? 9:10:30

A. I only taught two classes. 9:11:00

Q. Okay.

A. But I also ran a seminar, but those are the two courses I taught.

Q. Okay. What seminar did you run?

A. Public finance.

Q. Was the seminar for students or people outside --

A. It was for students.

Q. -- the university?

What was your salary at Duke University?

A. I think it was about the same. If I had stayed, it would have been higher. It was about 165,000. In each case, it's plus summer pay. 9:11:30

Q. Okay.

A. At Harvard, it's plus summer pay and a

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housing stipend. 9:12:00

Q. How do they calculate the summer pay?

A. It's ninths of your salary. So at Duke, it was three-ninths, so it's an extra 50- or $60,000.

Q. That's one-ninth of your salary?

A. Three-ninths.

Q. Oh, three-ninths.

At Harvard, how much is your -- did you say you have a house stipend; is that what it is?

A. Yeah, I can't divulge that. 9:12:30

Q. Okay.

A. But I can -- I get two-ninths summer pay.

Q. Two-ninths summer pay at Harvard?

A. Right.

Q. Do you -- do you personally own the house that you're staying at or does Harvard own the house and you live there or how does that work?

A. I own the house. Radcliff owns 15 percent of it.

Q. Okay.

A. And then I get a mortgage subsidy from Harvard Law School. 9:13:00

Q. Who is -- who is Radcliff?

A. Radcliff --

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Q. Yeah.

A. -- is a college. It's the girl's school version of Harvard.

Q. Prior to Duke University, where did you work? 9:13:30

A. Northwestern University.

Q. How long was your stay at Northwestern University?

A. I did a couple of stays. That stay was maybe two or three years. Then I had been there a few years earlier in the 1970s.

Q. What was your position at Northwestern University? 9:14:00

A. Professor of economics.

Q. During your tenure as a professor of economics at Northwestern University for two or three years, did you teach the same courses that you taught at Duke University?

A. I've also taught labor economics at Northwestern, public finance, public policy and analysis, and law and economics. 9:14:30

Q. While teaching at Northwestern University were you -- how many classes would you teach each semester? 9:15:00

A. I believe my load there was two courses

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each for two quarters.

Q. Two --

A. And one quarter I was off.

Q. Okay. And was that the same setup at Duke University, two courses per quarter? 9:15:30

A. No. Duke was semesters.

Q. Semester? Okay.

A. I taught two courses in one semester and no courses the other semester, about a half-time teaching load.

Q. And at Harvard, how does that break down? Are they on a quarter system or semester system? 9:16:00

A. Semesters, and it's one course each semester and one seminar each semester.

Q. What are the seminars that you've taught at Harvard?

A. Risk in environmental regulation, in the law school and it's jointly offered at other schools. And next spring, it will be quantitative methods for law and economics. 9:16:30

Q. Did you teach any seminars at Duke University? 9:17:00

A. Public finance workshop.

Q. Okay. Were you required as a professor at Duke University to hold seminars?

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A. No.

Q. How often would you hold the public finance workshop seminar? 9:17:30

A. Probably every other week. It varied.

Q. Let me back up. How long does the risk in environmental regulation seminar last?

A. Two hours each meeting, every week.

Q. And how long do these meetings -- I mean, how many meetings do you have? 9:18:00

A. We start the --

Q. I mean, is it like a course that you start?

A. It's a course. It's a whole semester, one day a week two hours the whole semester long.

Q. Okay. And that's the same thing for the quantitative methods of law --

A. Seminar.

Q. -- seminar?

A. But the course is two days a week for an hour and a half each time. 9:18:30

Q. Do these two courses go on simultaneously -- I mean, these two seminars go on simultaneously or do you -- are you planning -- did you teach one one semester and then a follow-up with the next one the next semester?

A. No, I'll do them -- I'll do them both --

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well, I'll do the risks in environment seminar in the fall, the quantitative methods seminar in the spring.

Q. And the public finance workshop, was that -- did you teach that in the fall and the spring at Duke University? 9:19:00

A. That was throughout the year.

Q. And would it last from the beginning of the year and run all the way through with the same people attending the seminar or would it -- would it -- would one class or one group finish the seminar in the semester and then you start over the next semester; is that how it worked?

A. No. It was the same people throughout the year. 9:19:30

Q. Did you teach any seminars at Northwestern University?

A. I participated in a labor seminar, but I didn't run the seminar.

Q. Okay. What was your role in this labor seminar?

A. Several faculty members went, but I was not the organizer. 9:20:00

Q. Did you give lectures on certain days or is that what your role was or --

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A. I would give maybe one talk. And otherwise, I was there to comment on other people's talks.

Q. These labor seminars, would you have -- would you invite guest speakers outside the university to speak at these seminars or did you do most of the speaking on the ones that you organized?

A. Labor seminar was almost all guest speakers, either from within the university or outside, including graduate students. 9:20:30

Q. How about Duke University, was the public finance workshop -- did you-all have mainly guest speakers or were you the primary speaker?

A. It was a few guest speakers, but we had a lot of graduate students speaking and other faculty members, including myself.

Q. How about your more recent seminars or risk environmental regulation, do you mainly speak to that or do you have guest speakers? 9:21:00

A. That's mostly me doing the work, as well as the co-teacher of the course.

Q. Who is the co-teacher of the risk environmental regulation?

A. Richard Zeckhauser.

Q. Could you spell his last name?

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A. Z-E-C-K-H-A-U-S-E-R.

Q. How did you meet Mr. Zeckhauser? 9:21:30

A. He was my undergraduate thesis advisor.

Q. Okay. What does an undergraduate thesis advisor do?

A. I wrote an undergraduate thesis at Harvard and he reads it. He's a professor who would supervise and read it.

Q. So his role was actually to critique your work or the students' work that -- 9:22:00

A. I was a student.

Q. Okay.

A. And he would critique it.

Q. Okay. Does -- is that the way he assists you in this seminar at Harvard now? Does he critique the students' work or what is his role?

A. He gives a few lectures as well and mostly he's there to help lead class discussion.

Q. Is his name Mr. Zeckhauser; is that correct? 9:22:30

A. Zeckhauser.

Q. Zeckhauser?

Is he going to assist you in your other seminar at Harvard, quantitative -- is it methods for law and -- what is it?

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A. Economics.

Q. And economics? Okay. 9:23:00

A. I'm not sure of the exact title, but he won't be -- he will not be involved in that seminar.

Q. Okay. Is anybody going to assist you in that seminar?

A. No.

Q. Who is -- did anyone assist you in your public finance seminar at Duke?

A. I worked with V. Kerry Smith one year and Bill Gentry another year. 9:23:30

Q. How did you meet V. Kerry Smith?

A. He's a faculty member and I was the chair of the committee that hired him, but I had known him before.

Q. Okay. Had -- prior to going to Duke -- or working at Duke University, had V. Kerry Smith taught at any other institutions? 9:24:00

A. North Carolina State, University of North Carolina, Vanderbilt, and others as well, I think.

Q. Did he teach public finance at those universities?

A. No. He taught environmental economics.

Q. You stated that another person helped you in your public finance workshops. What was his name? 9:24:30

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A. Bill Gentry.

Q. How did you meet Mr. Gentry?

A. I hired him, too. So I was the chair of the committee that hired him.

Q. Prior to working at Duke University, had Bill Gentry taught at any institutions?

A. Only as a graduate student at Princeton. 9:25:00

Q. Is anyone assisting you in the labor seminar at Northwestern --

A. Well --

Q. -- or did anybody assist you in the labor seminar at Northwestern? I'm sorry.

A. I didn't run the seminar. It was run by Dale Mortensen.

Q. Okay. Okay. Prior to working at 9:25:30 Northwestern, where did you work before that?

A. Going back in time, we had Harvard, Duke, Northwestern --

Q. Yes.

A. -- visitor at the University of Chicago for a year, Duke University again, the President's Council on Wage and Price Stability and the National 9:26:00 Council -- National Commission on Employment Policy, and then Northwestern again.

Q. Okay. As a visiting -- you were a

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visiting professor of the University of Chicago before you started teaching at Northwestern; is that correct?

A. I was -- when I returned to Northwestern, I was on the Northwestern payroll simultaneously with Chicago, so they hired me in. 9:26:30

Q. Okay.

A. But they only -- they only paid me a signing bonus. They didn't pay me a salary, because I was getting a salary from the University of Chicago.

Q. What was your -- what were your -- what did you do at the University of Chicago?

A. Research, no teaching.

Q. How long did you do this research at the University of Chicago? 9:27:00

A. One year.

Q. What were your research projects?

A. Hazard warnings, effective job safety regulations, that kind of thing, product liability.

Q. Okay. And prior to your research at University of Chicago, you said you were at the Duke University; is that correct? 9:27:30

A. That's correct.

Q. And what did you do at Duke University

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during this stint?

A. My main appointment was in the business school where I was a professor of business administration and director of their center for the study of business regulation. 9:28:00

Q. What were your job duties as director of center of business regulation?

A. Well, I brought in grants to support the research of myself and faculty members and ran visiting speakers series, working papers series, things like that.

Q. Do you remember -- when you say you brought in grants, did you -- did you contact businesses and individuals and request them for donations to Duke University for research? Is that basically what you were doing? 9:28:30

A. No corporate monies. So I only got grants from the National Science Foundation and the U.S. Environmental Protection Agency.

Q. Who were the members of the National Science Foundation? I mean, who comprises the National Science Foundation? 9:29:00

A. It's a government agency.

Q. What -- what was the other source of the grants you brought into the Duke University?

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A. U.S. Environmental Protection Agency.

Q. And at this time, who was your contact at the U.S. Environmental Protection Agency? 9:29:30

A. I don't recall. I've had a number of contact officers, but -- to make grant applications. Then after you get a grant, they put different people in charge of you, depending on the grant.

Q. Okay. And were all these grants funded for the business schools that -- is that what they were funded for or was they -- or were they grants to the general university? 9:30:00

A. They go to the university. The university takes a piece off the top. Then they send it to the business school and the business school takes another chunk. And then you spend the rest on research.

Q. Have you done any of this type of -- I mean, would you consider what you were doing with these grants fundraising? 9:30:30

A. No.

Q. Would that be accurate?

A. No, just general -- well, generating research support. So the universities like this, because they get a third of the money.

Q. Right.

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A. But it's not fundraising in the sense of getting endowment money.

Q. Okay. Was that the only time that you have worked in the area of securing grants for universities where you were working at? 9:31:00

A. No.

Q. Have you done this type of work at Harvard?

A. I've been funded continuously by EPA for at least 13 years.

Q. So basically, the last 13 years, wherever you've taught, you've been funded by the EPA; is that correct?

A. Right now, I still have my money at Duke, so I have a grant still at Duke and an office there and a research assistant, a computer. So I have a whole research operation still at Duke. 9:31:30

Q. How much does the EPA fund a year for these grants?

A. I don't know. I think I only have a couple hundred thousand dollars left, but it's been high. So it's been between half million and a million for a given year.

Q. Okay. That's how much they ear mark each year or is that -- or did they just put in -- like a million dollars at the beginning and then you have 9:32:00

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drawn off that through the 13 years?

A. It's gone in chunks. So some -- but never a chunk as big as a million dollars in one chunk, but there would be a year where I would get several chunks.

Q. Okay. And on average, I mean, just -- I don't expect an exact figure, but estimate how big the yearly chunks would be. 9:32:30

A. It's not that high right now, but we just finished a Superfund project that was averaging over a half a million dollars a year for several years.

Q. And prior to that, were you averaging a half a million, also?

A. A few hundred thousand, a couple hundred thousand, in that range, but under half million a year.

Q. How long had you worked on the Superfund project? 9:33:00

A. Four, five years. It's still going on.

Q. And is this Superfund project, is this related to your work at Duke that you're doing or did you carry it with you to Harvard or --

A. Well, I'm doing the research and writing up the papers at Harvard. We still have all of our data there at Duke. And since the EPA funding for 9:33:30

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that particular project is now over, I'm using Harvard money to pay my research assistant at Duke for that particular work.

Q. Are you receiving any grants from the National Science Foundation? 9:34:00

A. Not now.

Q. How many years did you receive grants from the National Science Foundation?

A. I believe I have had a couple of grants and each one lasted about a year.

Q. You said you had a couple of grants?

A. A couple of grants.

Q. When were these grants funded?

A. One in the late '70s, early '80s. Another one in the late '80s, early '90s. 9:34:30

Q. Have you ever received grants from any other entities during your teaching years at Duke and Northwestern and Harvard, any of those schools?

A. I was on a grant, small grant, for the Roscoe Pound Foundation. 9:35:00

Q. Okay. And what is the Roscoe Pound Foundation?

A. I think it's an ATLA-sponsored group that -- at least I've been told that anyway, that worries about -- I didn't know that at the time I got the

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grant, that worries about legal reform.

Q. Okay. And what is their position on legal reform?

A. I don't know, but this was a grant to study punitive damages and I just worked with a Duke professor who had the grant, so it was not my grant. 9:35:30

Q. Is this -- is the Roscoe Pound Foundation, is this a public foundation or a private foundation?

A. My guess is -- I'm not sure -- I'm not sure what that means.

Q. Okay.

A. What's a --

Q. I guess --

A. It's not a government agency.

Q. Okay. I guess that's what I'm asking, versus, let's say, the National Science Foundation, you just said was a government agency, correct? 9:36:00

A. That's correct.

Q. Okay. And the Roscoe Pound Foundation is not a government agency, correct?

A. That's right.

Q. So that's what I'm asking, the distinction.

Do you know who the creator was of the Roscoe Pound Foundation? I mean, is it Roscoe

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Pound? I mean, which --

A. My guess -- that would be a good guess.

Q. Yeah. 9:36:30

A. But I had no direct dealing with them. I --

Q. Kind of like Grant's tomb?

A. Right.

Q. Who's buried in Grant's tomb?

A. Right. But I don't know, because I'm not the person who had the grant. I didn't deal with the foundation. I had no contact with them.

Q. Okay. You just did some of the work that the foundation -- for the grant that the foundation funded itself, correct?

A. I essentially assisted a -- or worked with a professor who had the grant.

Q. Okay. Do you know how much this grant was?

A. I can't believe it was more than $10,000 or so. It was a small grant.

Q. What type of work did you do on this project? 9:37:00

A. We did a tally of all lawsuits involving punitive damages based on Lexus case search and then called up the participants to try to find out the

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eventual resolution.

Q. Was this research ever published?

A. No. I did all the statistical analysis, handed it to the guy who got the grant, and I'm waiting for him to write it up, so -- 9:37:30

Q. Okay.

A. -- that's where we stand.

Q. Okay. How long -- I mean, when did you-all start this project?

A. In the '80s.

Q. Okay. And as of this date, nothing has been ever printed or done with the research that you gave the director of this project? 9:38:00

A. Not a single word of text has been written, as far as I know.

Q. Okay. What is the name of the director of this -- of this research project?

A. Jerome Kolp.

Q. And how did you meet Mr. Kolp?

A. He was a classmate of mine at Harvard before he went to Harvard Law School. 9:38:30

Q. Where is Mr. Kolp employed now?

A. He's a professor at Duke Law School.

Q. Have you ever contacted Mr. Kolp and asked him, you know, if he was going to ever write

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anything up or --

A. Regularly.

Q. And what is his response?

A. Well, he hasn't gotten around to it. He's had some problems. His house has burned down, so he's had his hands full. 9:39:00

Q. Do you know how he decided to do this particular project? I mean -- what, did the Roscoe Pound Foundation contact him and ask him to do this study or was this -- or was this the topic that he chose? How did that work?

A. It was a competitive application where they advertised for grant applications dealing with punitive damages. 9:39:30

Q. Do you know who supports the Roscoe Pound Foundation, as far as financially, at all?

A. No. I just know that it's rumored to be a plaintiffs oriented group.

Q. But you are not familiar with the names of any of their members, right? 9:40:00

A. The only name that I've heard is ATLA and I'm not sure what the connection is.

Q. Okay. Any other grants that you've received during your career as a professor/instructor?

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A. U.S. Department of Labor. I've had various grants to study job safety standards. A grant from the U.S. Office of Management and Budget also in the safety area, benefit cost analysis area. 9:40:30

Q. Are you currently getting any grant money from the Department of Labor? 9:41:00

A. No.

Q. Are you currently getting any grant money from the United States Office of Management and Budget?

A. No.

Q. How much grant money have you received from the Department of Labor?

A. I don't recall. A lot of -- several $10,000 grants. Maybe one big one, $100,000 grant. I'm not sure of the exact amount. 9:41:30

Q. Okay. When is the last -- what year was the last grant you received from the Department of Labor?

A. I don't know. All these are listed on my CV at the back.

Q. Okay.

A. But not in the 1990s.

Q. Okay. How much have you gotten in grants from the U.S. Office of Management and Budget?

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A. They were small, on the order of $10,000. I'm not sure how many I've had. One or two.

Q. And you received one or two grants from them? 9:42:00

A. At least one, yeah -- at least two. So at least two.

Q. When is the last year you received a grant from the U.S. Office of Management and Budget?

A. Well, the exact date is on my CV. My guess would be about five years ago. 9:42:30

Q. Any other grants that you've received, that you remember?

A. I've done work for other government agencies. I'm not sure what counts as a grant and what's consulting, but I've worked for the Justice Department, the General Accounting Office.

Q. Have you done anything for the surgeon general? 9:43:00

A. No.

Q. Have --

A. Well, I was a consultant on smoking to the EPA, but not the surgeon general.

Q. Okay. That was my -- how -- what project are you currently working on for the EPA? 9:43:30

A. It's a survey study that's going to be run

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in -- that's being run now in North Carolina. Our second site will be Denver, to value what is clean water worth to the citizens. So it's the pilot project for a larger national study. 9:44:00

Q. Am I correct that the only current entity that you're getting grant support from now is the United States Environmental Protection Agency?

A. Other than Harvard Law School.

Q. Okay. And what -- describe what -- your grant at Harvard Law School. 9:44:30

A. Well, I have three sources of money there. First, I get a research stipend as a faculty member.

Q. How much is that?

A. I'm not sure.

Q. Okay.

A. Because it's a lot of different pieces, but probably $15,000.

Q. Okay.

A. And then there's -- the Olin Center for Law and Economics gives me money. And I administer another fund donated to Harvard Law School. 9:45:00

Q. What's the name of that fund; do you know?

A. The Sheldon Sivack research fund.

Q. The Olin Center -- is a law and economic

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fund; is that what you said?

A. Right. 9:45:30

Q. How much is that annually?

A. I don't know. There's -- last year, I maybe got $100,000 from the fund.

Q. Okay. And is it alumni and other entities that donate the money for that fund?

A. The Olin Foundation --

Q. Okay. Olin Foundation.

A. -- donated the money.

Q. Do you know who sits on the Olin Foundation?

A. William Simon. 9:46:00

Q. And who is William Simon?

A. Former secretary of the treasury.

Q. What is his position? Is he called director of the Olin Center or what's his title?

A. He's, I guess, the equivalent of the CEO. So he doesn't do the day-to-day administrative 9:46:30 work, but he would be the one who sets the broad direction for the Olin Foundation.

Q. Does he have -- as a CEO, does he have a board of directors on this foundation?

A. I'm sure. It's a large group.

Q. Okay.

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A. I don't know the names.

Q. Okay. Do you know anybody that's on this board of directors?

A. No.

Q. Does any type of industry sit on the board of directors? 9:47:00

A. I don't know.

Q. The -- is it the Sheldon Civic Research Fund; is that what --

A. Sheldon Sivack Research Fund.

Q. Sivack?

Okay. How much a year do you get from that?

A. Depends on what I want to draw out, so --

Q. Do you have any limits as to what you draw out or --

A. I asked for maybe $50,000, just a guess.

Q. Does the research stipend that you get, does that go up as you -- as your tenure increases 9:47:30 at Harvard? Do you get increased funding --

A. This is already --

Q. -- or stipend?

A. This is already above the standard stipend.

Q. Okay.

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A. So I will get the increases that go along with the standard stipend, plus I get -- I don't know, X-thousand dollars, 5- or $10,000 more than the standard full professor. 9:48:00

Q. Okay. And will that continually increase through the years at Harvard?

A. The part that all the other full professors get will increase and that part of the fund will go up, but my bonus above the standard grant won't go up. So that's not -- it doesn't have a cost-of-living escalator.

Q. And your bonus above the usual amount is how much? 9:48:30

A. 5- or $10,000, somewhere in there. It depends on what you count.

Q. So the $15,000 figure, was that including the 5- or $10,000 bonus you get or --

A. Yes.

Q. -- not included?

A. But I'm not sure it includes student research assistants, which we're provided. So I'm not exactly sure what went into that. That's just the number that I know was prominent in my discussions with the dean.

Q. So the university also provides you some

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students to work on your staff? 9:49:00

A. We have Harvard Law School student time --

Q. Okay.

A. -- that I can use.

Q. What -- the Olin Center Law and Economics Foundation, the $100,000 that -- is that how much they gave you last year?

A. Last year.

Q. What was that money used for?

A. Buying a Sun Ultra II computer and a Ph.D. research programmer. 9:49:30

Q. The Sheldon Sivack Research Fund, last year I believe you testified that you got 50,000 from that fund; is that correct?

A. That's ballpark.

Q. Ballpark?

A. It could be less. I don't know.

Q. And I won't hold -- I mean, you know --? 9:50:00

A. Right.

Q. I'm not going to hold you to exact amount, but what did that money go to last year?

A. Same kinds of things, computer equipment, software, programming time. And I'll use it to pay a research assistant at Duke starting in -- we started in July working on our Superfund book.

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Q. Okay. And these are the three grants that you talked about that you're receiving as a professor at Harvard; is that correct? 9:50:30

A. Three sources of money I have, yes.

Q. All right. Is there any other sources of money that you're receiving right now from any other entity in the way of grants or research funding or anything like that? 9:51:00

A. Just consulting.

Q. Okay.

A. And I work on the EPA science advisory board where I occasionally get money.

Q. The EPA science advisory board?

A. Advisory board.

Q. How long have you been sitting on this board? 9:51:30

A. I guess it's about five years. It's on my vitae, so that's something we could look up.

Q. Okay. How long have you been doing consulting work?

A. Well, in the legal context, maybe since 1983 or so. 9:52:00

Q. Okay.

A. But I had a consulting job -- in graduate school, I worked for somebody. It wasn't much, but

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it depends -- you know.

Q. Yeah.

A. It depends on what you classify.

Q. What you consider consulting.

Let's -- just give me a -- and some of this information might be in your CV, but just give me a thumbnail sketch of the -- of the nonlegal consulting work that you've done since your -- I guess your undergraduate work was at Harvard, correct? 9:52:30

A. That's correct.

Q. Did you start doing consulting work after you received your undergraduate degree or --

A. I just did various small things on some water pollution project. I did another project on the value of life for Oregon National Laboratories. 9:53:00

Q. Who hired you to do the consulting for the water pollution project?

A. Rick Burkman -- no. No, Robert Edelstein. He was a professor at Wharton then.

Q. And was this project funded by grant, also? 9:53:30

A. I have no idea where he got the -- but the grant -- whether it was a grant, private.

Q. Okay.

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A. I just did a small piece of the analysis.

Q. You talked about Oregon National Laboratories; is that correct?

A. That's correct.

Q. What business is Oregon National Laboratories in?

A. It's a think tank/consulting firm that does work for the U.S. Department of Energy. So this was a Department of Energy project. 9:54:00

Q. Does -- does the Oregon National Laboratories only do -- only act as a think tank and do consulting work for the -- for energy companies?

A. U.S. Department of Energy.

Q. Okay.

A. As far as I know, it's only for a government agency. 9:54:30

Q. Okay. So their work is strictly limited to government work?

A. I'm not sure. All I know is the project I was on --

Q. Okay.

A. -- was a government project.

Q. And what was the -- what did the value of life project that you do -- did, what did that entail? 9:55:00

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A. Estimating how much extra pay workers get for facing fatality risks on the job.

Q. Any other nonlegal consulting work that you've done through the years?

A. I've done a lot of regulatory-related work. I mean, I'm not sure what you'd call that. Work on hazard warnings, designing hazard warnings. 9:55:30

Q. Let's switch over to the legal consulting work you've done. What legal consulting work have you done?

MR. ATKESON: Let me just counsel the witness at this time. I don't know whether you've worked at any time as a consulting expert, where you haven't been disclosed to the other side.

It's not our privilege to assert, but to the extent that you were a consulting expert, that is a work product privilege that existed in whatever cases those are. So in answering the question, I can't assert that privilege. You should just be aware that that exists. Those lawyers are not here today to say anything about it, but any case in which you were -- the other side knew about you is fair game. Is that -- 9:56:00

MR. FISHER: Yeah, that's fine.

Q. So did you understand your counsel's 9:56:30

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instructions regarding the consulting work -- I mean, the legal consulting work?

A. I did.

Q. Okay. What legal consulting work have you done where the other party involved in the litigation has been made aware of your work?

A. Well, the cigarette litigation.

Q. Okay. Okay.

A. Plaintiffs' cases involving personal injury. 9:57:00

Q. Okay. Let's just go ahead and list them. I'll go back to that.

A. Maybe some defense, wrongful termination and discrimination cases, hazard warnings, market share liability, DES, risk utility analyses tie up with the hazard warning stuff as well. 9:57:30

Q. And I'll get to what you did for each of these as a consultant in this litigation, but any other types of cases or consulting work you've done in the litigation arena? 9:58:00

A. Well, the Exxon Valdez' oil spill, but I was never named as an expert.

Q. Okay.

A. I worked for the government.

Q. Okay. Any others that you can think of? 9:58:30

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A. Well, a lot of these include lots of different cases, so hazards warnings would include -- or safety devices to this. Add safety devices to this.

Q. Let's start with the cigarette litigation. What -- how many cases have you been named by tobacco industry's attorneys as an expert?

A. They don't tell me, but -- 9:59:00

Q. So you don't know if you've been designated or not?

A. It could be a surprise. I've been deposed in Mississippi and Florida. We're now doing it for Texas. I know I have a deposition upcoming in Minnesota. I've been named in Pennsylvania. I'm not sure where else I've been named. 9:59:30

Q. Okay.

MR. ATKESON: Just for the record, the Pennsylvania case is not an attorney general case.

Q. Okay. All right. Is that an individual smoker's case?

A. It's a class action addiction.

Q. Okay. Any other cigarette litigation that you've ever been named as an expert witness in? 10:00:00

A. I don't believe I was named in the past. I may have been, but I was never deposed in the past.

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Q. Okay. How many depositions have you given in relation to cigarette or tobacco litigation?

A. This is the third.

Q. Okay. Were the first two Mississippi and Florida? 10:00:30

A. That's right.

Q. Okay. So other than the Mississippi and Florida deposition, then, this one that's going on, you've never ever been deposed any other time in a case related to products liability litigation for tobacco?

A. No.

Q. How many -- how many hours did you bill on the Mississippi case? 10:01:00

A. I have no idea.

Q. Do you know how much you've been -- how much compensation you've received for your consultation in the Mississippi case?

A. No.

Q. Do you have any idea?

A. No.

Q. Ballpark?

A. I'd have to look at my records just to see what -- what was Mississippi, what was Florida. 10:01:30

Q. Did you actually bill those cases

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separately or did -- do you just bill a general defense fund or whatever for your time?

A. I'll bill -- I haven't billed Florida yet or Texas, but I'll bill those as a pair, but -- you know, indicating the time for the deposition, time for preparation, the research time that went into it. 10:02:00

Q. Okay.

MR. ATKESON: I'll tell you just so you -- I mean, we don't have to produce it later. There's an exhibit to the Mississippi deposition which shows his billing for it. It's got an incorrect calculation in it. I think it said $1600. It's really 8,000, approximately.

MR. FISHER: Okay. So it should be 8,000 rather than 1600? 10:02:30

MR. ATKESON: Yeah.

MR. FISHER: Is that -- is that just -- is that one invoice or is that --

MR. ATKESON: One invoice.

MR. FISHER: -- or total bill? One invoice?

MR. ATKESON: And I'll also state for the record, because you'll see it in that deposition -- and I don't know if it will be clear there. There's

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another invoice that is for work that is not related to any of the litigation. And that is for a larger number. I think it's -- I don't know, 20- to 40,000, somewhere around there. 10:03:00

Q. (BY MR. FISHER) Do you know when you were first retained to -- as a consultant in the Mississippi lawsuit? 10:03:30

A. Summer. The two days of work that he's talking about billing were not done until, let's say, this summer.

Q. Okay.

A. It's all blurs to what months I was deposed, but it was warm.

Q. All right. Well, I guess what my question is, is this: When were you informed that they -- that they named you as an expert in the Mississippi litigation? Maybe that question will be clearer. 10:04:00

A. I don't remember. I mean, it was before the deposition. I just don't know --

Q. Okay. Did you --

A. I knew I might be called on. So for a long time, I -- for a longer time I knew I might be named as an expert, but I didn't know exactly when they did the naming.

Q. Okay.

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MR. ATKESON: Again, just to clear it up, Mississippi had a limited number of experts and it wasn't until we made the final sorting as to -- I think it was 27 experts or -- maybe it was just 20, as to whether he would be on that list or not. 10:04:30

And that decision was made right at about the time -- whenever the designation was made. It was a two- or three-page document in Mississippi. It would be sometime in the spring.

MR. FISHER: We've been going on for about two hours. Why don't we take about a five-minute break. 10:05:00

MR. ATKESON: Okay.

THE VIDEOGRAPHER: We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. 10:05:30

10:12:52

Q. (BY MR. FISHER) Sir, is it your testimony that the work that you -- the consultation work you did in the Mississippi lawsuit was basically giving a deposition? 10:13:00

A. And the prep time before it.

Q. How about in the Florida litigation? The same thing?

A. No. Florida was more work that even

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continued after the deposition, because I was presenting numbers there.

MR. FISHER: Oh, I'm sorry. 10:13:30

Q. How much -- do you have any idea or an estimate of how much time you have billed -- billed the defense firms for the work in the Florida litigation?

A. No. I have not billed them.

Q. Okay. Do you have any idea how many hours you've worked on the Florida litigation?

A. No, but a week would not be out of line. 10:14:00

Q. Okay. When we're talking about a week, you're talking about 40 hours?

A. Yes, sir, 40 hours.

Q. If you could, try to break down the type of work that you've done in this 40 hours in the Florida litigation.

A. Well, I was deposed. I reviewed materials 10:14:30 for the deposition. I refined my analysis for the State of Florida. They wanted a more detailed report of how I did my calculations. That involved both telling them how I did them, but also changing them a little bit.

And when I did that, I changed all 50 10:15:00 states. So that -- most of the time has been spent

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redoing all my calculations for 50 states, including Florida, which is part of a paper I had given them.

Q. And the -- and the calculations that you're talking about are the audits and surveys that you used in formulating your opinion or what calculations are you talking about?

A. That's something else. The time I was referring to here pertained to assessing the Medicaid and nursing home care costs. 10:15:30

MR. ATKESON: Let me just clarify for the record.

MR. FISHER: Okay. And I think I understand what you're saying.

MR. ATKESON: He was designated on an additional topic in Florida.

Q. (BY MR. FISHER) Okay. And just so we're clear, have you -- do you plan in the Texas litigation to -- to giving any opinions regarding damages or analysis regarding Medicaid and Medicare costs? 10:16:00

A. If asked, I could comment on the methodology and how you should think about it, but I will not be presenting those numbers for the State of Texas.

Q. Did you -- with regarding to the analysis

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that you talked about in the Florida litigation, was that analysis strictly related to Medicaid costs? 10:16:30

A. Medicaid, nursing home, pensions, sick leave, life insurance. It was everything, in terms of the consequences of smoking.

Q. And have you formulated those -- I think you said that you changed your analysis for all 50 states. Have you done any of this work for Texas? 10:17:00

A. Texas is one of the 50 states, but it's not part of what I'm doing for them.

Q. Okay.

MR. ATKESON: Let me just state for the record here. What Dr. Viscusi had done is he's written up an article that he makes these calculations for all 50 states. When we found that out, we designated him as a person in Florida who could testify as to the numbers. 10:17:30

Okay. Because in Florida, we're limited by -- to the numbers of experts. In Texas, we're not limited. And so the person who's going to be dealing with those subjects is Finis Welch.

MR. FISHER: Okay.

MR. ATKESON: Okay? And Dr. Viscusi will not be addressing those. He is knowledgeable about what he believes to be the proper methodology and 10:18:00

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the like. We are not designating him on those subjects, but --

MR. FISHER: Okay.

MR. ATKESON: -- he has a knowledge base in that, and if you want to ask him, you can, but we're not expecting on putting him on on direct on those subjects.

MR. FISHER: Okay. And you'll agree that if you change your designation, we can -- 10:18:30

MR. ATKESON: We'll certainly let you know and we'll open him up -- yeah, we're not saying if you don't ask him about that today and we later change it, you're stuck.

MR. FISHER: Who is the expert that you're saying that you designated for that purpose?

MR. ATKESON: Well, I have a peripheral role in all of these states. My understanding is that it's Dr. Finis Welch, but if it's somebody else, I would -- I don't want to be stuck with that.

MR. FISHER: Okay. That's fine. 10:19:00

Q. (BY MR. FISHER) Do you know Dr. Finis Welch?

A. I know who he is and I may have even met him. But like if he saw me in an elevator, I would know who he was, because -- I mean, he's handicapped

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and he's -- you know, so he would not -- probably not know who I am, but I'm sure he's read something I've done.

Q. Have you reviewed any of his work?

A. Nothing related to cigarettes. I've read some articles that he wrote when I was a graduate student. 10:19:30

Q. Have you participated in any studies with him at all?

A. No.

Q. Have you billed any time for the Minnesota case?

A. No.

Q. Have you billed any time for the Pennsylvania class action case? 10:20:00

A. No.

Q. I understand in reviewing your previous depositions given in the Mississippi case and the Florida case, that in those depositions, you testified that you never have reviewed any internal documents of any of the tobacco companies. Is that still true today? 10:20:30

A. Yes.

Q. Let's talk a little bit about the plaintiffs' cases that you've testified in. How

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many personal injury plaintiffs' cases have you testified as a consultant? 10:21:00

A. I'm not sure. Certainly over 25. My guess would be under 50.

Q. What type of consulting work did you do in these cases?

A. Conventional damages analysis. In some cases, hazard warnings work, but that's under a different column. 10:21:30

Q. Okay.

A. Let's do that later.

Q. Okay. The conventional damages analysis, you basically predict the economic loss or future economic loss based on injury; is that what you're talking about?

A. Present value of lost earnings, fringe benefits, medical costs, and lost services. 10:22:00

Q. So you were asked to analyze what an individual had made in the past, what they made in the future, what type of benefits or bonuses they had received, and -- and figure out, based on certain work-related tables, how long that individual could be expected to work in that type of job? 10:22:30

A. That's the kind at thing I did there.

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Q. And then you, at the end of your analysis, taking in a number of factors, you come to a number that you believe the person has suffered in economical loss due to the injuries; is that correct?

A. That's correct.

Q. Where -- where have you performed this consulting work? I mean, where -- is there a geographic area that you've generally stayed in in this type of consulting work with the plaintiff cases? 10:23:00

A. As it turns out, most at it has been located in a particular area. Most at it has been in Saint Louis, but I've done it elsewhere.

Q. Okay. What other locations have you done this type of work?

A. Chicago, Philadelphia, Ohio. Those are the ones that come to mind right now. 10:23:30

Q. Okay. Do you know any of the names of the plaintiffs' attorneys that retained you for those cases? 52011 1712

A. The Hullverson law firm in Saint Louis. Basically, the entire firm, because I worked for all the -- it's a small firm. I've worked for those lawyers. 10:24:00

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Q. Okay. How big a firm is that?

A. Under 10 lawyers.

Q. Okay.

A. Half of them are named Hullverson, four of them. And some other firms in the Saint Louis area.

Q. Okay. Any -- do any other names of plaintiffs' firms come to mind -- 10:24:30

A. Sure.

Q. -- other than the Hullverson?

A. Well, the Schlichter law firm, the Schlapprizzi law firm.

Q. Where is the Schlichter law firm located?

A. All of these are in Saint Louis.

Q. Okay.

A. Bogart & Denton. Those four firms come up -- come to mind off the top of the head, but most of the work is for the Hullverson law firm. 10:25:00

Q. You testified earlier that you testified in over 25 cases, but less than 50. Would there be -- would you have testified in over 15 cases for the Hullverson law firm?

A. Yes. And I have testified in over 25. I think it's less than 50. I'm not sure.

Q. Okay. For this consultation work, how much do you bill an hour for this type of work? 10:25:30

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A. They're grandfathered in at my old rates at 425 per hour or -- and depositions are billed differently, too, so it's --

Q. Are depositions -- are you paid more in depositions?

A. Well, it's 1200 for the morning, 1600 for the afternoon, and the depositions usually last under two hours, so it works out to be more. 10:26:00

Q. Okay. Let's talk about the defense cases. Is that the same type of consulting work that you do regarding all economic or lost wage damages that a person might suffer? 10:26:30

A. I think it's some of that, so -- a couple of major cases I've been doing that kind of thing on discrimination. Sometimes discrimination on both sides. But often it's on other issues, such as hazard warnings, safety devices, market share liability, other topics.

Q. Have you ever testified in a plaintiff's case for a -- or have you ever testified on behalf of the plaintiff for something other than economic damages -- 10:27:00

A. Yes.

Q. -- models?

A. Yes.

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Q. And have you done this work in hazard warnings cases?

A. Yes.

Q. How many hazard warnings cases have you testified for the plaintiff in?

A. Under five, so -- that would be my guess. Certainly at least three or four. So somewhere in that range. 10:27:30

Q. How many --

A. At least four depositions I can think of right now.

Q. Okay. How many cases have you testified for the defendant in hazard warnings or safety devices cases?

A. Probably a comparable number.

Q. By that --

A. Under ten. Five, something like that. 10:28:00

Q. What type of consultation work do you do in those cases?

A. Those would be depositions or -- and based on my work for the government, I assess the adequacy of warnings and whether a stronger warning is necessary or whether the current warning is adequate.

Q. In the hazard warnings cases that you've testified for the plaintiff, what was the subject or 10:28:30

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what hazard were you assessing at the time?

A. One was a risk from a waterskiing vest, whether it had an appropriate label indicating the proper usage of it. Another was an electrocution risk case. A couple involving softballs. Those are the ones -- oh, then there was jaw implants with Teflon. Those are the main ones I can think of. 10:29:00 10:29:30

Q. Okay. Were your opinions relating these different cases all dealing with warnings?

A. All these were warnings cases.

Q. Have you ever testified in -- for the plaintiff in a case relating to safety devices? 10:30:00

A. None come to mind, but it's not inconceivable that I have.

Q. Okay. How about the -- let's go to the hazard warnings that you've testified for the defendant. Could you please tell me what those cases were involving? 10:30:30

A. Tetracycline. I was deposed in that case.

Q. And was that a warning issue that you testified about? 10:31:00

A. That's correct.

I testified in court. It was in a liability case on food cancer warnings for the food industry in California.

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Q. But that wasn't for a specific litigation. That was just for the government?

A. No. The food industry was suing the government.

Q. Okay.

A. There may be others.

Q. Okay. Do you remember any of the safety device cases that you testified for the defendants? 10:31:30 10:32:00

A. Needle sticks, AIDS needle stick cases, gun safety. I think those are the main ones.

Q. Was -- going to the hazard warnings for the plaintiffs, was the waterskiing vest -- is that a single case? Have you just testified in one case regarding waterskiing vests? 10:32:30

A. One case.

Q. Electrocution risk case, was that just one case? 10:33:00

A. One case.

Q. The softball case, was that involving just one case or have you testified in several cases on that?

A. Two separate cases.

Q. The TMJ implants, how many cases have you testified in that?

A. One.

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Q. Briefly, could you tell me what your conclusions were in the waterskiing vest case?

A. That they should have had a warning for this vest indicating that it was not appropriate for 10:33:30 waterskiing.

Q. Was that a case involving someone that drowned or --

A. He became a paraplegic because the vest operated improperly in the context of waterskiing, so he became paralyzed.

Q. Okay. Did it cause an injury to his neck or back or something?

A. That's correct. It flipped his -- it spun around his neck. His head hit the bottom of the lake and paralyzed him.

Q. Okay. The electrician -- the electrocution risk case, what was your conclusion in 10:34:00 that case?

A. That they needed a better warning. I forget exactly what it was.

Q. What was the product in dealing with electrocution?

A. It may have been a heated pool or something, but it's been a while. This is --

Q. Okay.

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A. It's not a vivid memory.

Q. Okay. The softball warning cases, what were your conclusions in that?

A. The league didn't advise regarding the importance of wearing helmets. 10:34:30

Q. The TMJ cases, what was your conclusion in that?

A. That Dupont essentially did not convey the information downstream that the Teflon that it was selling was not appropriate for using in a medical 10:35:00 device.

Q. In your opinion, did Dupont have a duty to send that information downstream?

A. I believe I said that, yes.

Q. In your opinion, does any manufacturer of a product have a duty to inform purchasers or users 10:35:30 of the product of the hazards that they are aware of?

A. It depends on the context. So in the case of well-known dangers, certainly that would not be required.

Q. How about dangers that are not well known or refuted by a specific industry?

A. Well, this is a legal conclusion. And 10:36:00 since I'm not a lawyer, I'll let the court decide

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what's the duty to warn.

Q. Okay. Well, in -- you stated that you gave an opinion in the TMJ case that Dupont had a duty to convey that information downstream?

A. I misspoke. It was -- they had -- from an economics standpoint, it would have been efficient for them to do that. 10:36:30

Q. And why would it be efficient for them to do that?

A. The product they were selling downstream had attributes that could not be monitored by consumers and they would not know, for example, that it was industrial-grade Teflon being used in a medical device.

Q. Would it be efficient economically for a company to give consumers or purchasers of their product information about hazards that are not known or have been refuted by their industry? 10:37:00

A. Well, it depends on what other safety or risk communication efforts are going on. So a lot depends on the context, in terms of the other information that's happening. 10:37:30

Q. What was your conclusion in the tetracycline case that you testified for the defendants in? 10:38:00

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A. Based on a detailed analysis of every warning for prescription drugs that have been changed over -- at least a decade, we concluded that additional nuances and bells and whistles, such as larger print and so on, generally do not have a significant effect on prescription practices. And that the tetracycline warning was effective and that it did lead to a decrease in the prescribing of the drug for the at-risk population group, which is young children. 10:38:30

Q. How about in the food cancer case, what was your conclusion in that case?

A. The State of California is going to mandate warning labels on -- product warning labels for all products that posed a life-time cancer risk of 100,000, which makes an annual cancer risk of under one in a million and they were going to pattern these warnings after the cigarette warnings. 10:39:00

And I did not think it was appropriate to place cigarette-warning-type labels on products that pose negligible risks. So I favored a different warning language. 10:39:30

Q. And you were representing the -- you testified for the government in that case or the -- or the independent companies?

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A. The grocery manufacturers.

Q. How about the needle stick case, what -- what was your conclusion in that case? 10:40:00

A. Beckton Dickinson made devices for drawing blood. The plaintiffs argued that these should be stick proof, in some sense. The problem is that needles inherently tend to be sharp.

And since the needle sticks in that case, 10:40:30 the company had, in fact, marketed a device that could prevent sticks and hospitals refused to purchase it. So in some sense, the market had spoken in that hospitals did not believe that the device was sufficiently effective to warrant buying them. 10:41:00

Q. What was the injury that was involved in the needle stick case?

A. Two different cases of -- at least two different cases of medical personnel sticking themselves with the needle, let's say, after working in an AIDS ward. So one case is where a nurse drew blood, put the needle up on the table like a rocket, 10:41:30 with the needle pointing in the air, reached across the needle, and scraped herself and that's how she got AIDS.

Q. Did you suggest any type of -- was it your

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conclusion that any type of warnings or guards should be used for needles in that situation?

A. Well, the company had developed a mechanism with guards, but it was cumbersome. And since that event, they put it on the market and hospitals didn't buy it. It's still out there on the market now. 10:42:00

Q. The gun safety case that you worked on, what was your conclusion in that case?

A. That even if the gun had had a safety device, that it is not acceptable practice to leave a loaded gun on a coffee table in a house with young children when you go to bed at night. 10:42:30

And the plaintiffs had argued that if only the gun had had a safety on it, the accident wouldn't have happened. And I suggested that for a policeman, that having a safety device should not give you a false sense of security and think that you can leave loaded guns out. 10:43:00

Q. Do you believe that consumers or users of products can be misled into a false sense of -- false sense of security by representations made by companies?

A. I don't know. I've documented that that's the case for representations made by the government,

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but I haven't studied companies' representations on that issue.

Q. Okay. You talked about the market share liability, that you've done some consulting work in litigation in relation to that subject. What -- what involvement have you had with regard to market share liability?

A. I did the DES market share liability analysis for the State at New York for Bristol Myers Squibb.

Q. And what product did that involve?

A. DES.

Q. Okay. I'm sorry.

What is DES?

A. It's a prescription drug that I couldn't even attempt to spell.

Q. Okay. Well, I won't ask you to do that, then.

What is this drug used for?

A. It was given for a lot of different ailments. Women took it during pregnancy. It was used after pregnancy. It was given for breast cancer, for prostate cancer. It was handed out by doctors for a wide range of things. Lactate -- for lactate suppression.

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Q. What was your role in this case or this litigation?

A. Well, liability was given, so there was no question the companies were liable. The only issue at this stage was how to divide up the costs among the different participating companies. And my job was to assess the respective costs that should be borne by each company. 10:45:30

Q. And what methodology did you use to determine this fact?

A. I labeled it "the conditions method." What I did is examine different medical conditions that DES was prescribed for. Then based on how much DES was prescribed for these conditions, how many 10:46:00 people had these conditions, I constructed the past market shares.

Q. In your opinion, is market share liability an effective way to distribute liability costs?

A. It depends on how good the data are for figuring out the market shares. It's effective if the data are great. If the data are not accurate, 10:46:30 then essentially it becomes an arbitrary method that doesn't create efficient incentives or is not -- and is also not fair, in terms of allocating the burden across companies. So a lot depends on the context

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and what kind of information you have to allocate the burdens.

Q. Would you agree that in making these type of analyses, that the data that you used in determining -- the data that you use in formulating this analysis is important? 10:47:00

A. The data aren't, as is the nature of the product. So in this case, we had a homogeneous product.

Q. Would you support the use of market share liability for products that are not homogeneous? 10:47:30

A. It depends on whether you can have accurate ways to weight the different products. So in this case, let's say, 5 milligram DES and 25 milligram DES, that's not really homogeneous, but you know the 25 milligrams is 5 times as potent as the 5 milligram. 10:48:00

So the worst -- or the more inaccurate your weighting scheme, the less likely I'd be to support it. There's a continuum.

Q. Would you agree with the statement that if you use flawed information, you will have a flawed analysis? 10:48:30

A. The analysis could be good, so -- in terms of your methodology could be good, but you've

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plugged the wrong data in it. So if you amend the data, then the analysis is fine. Then you could come out with a good result.

Q. But if you don't amend the data, if you use flawed data or incorrect data, would you, as a result, get a flawed analysis? 10:49:00

A. Well, it may not be perfect to question whether it's biased in a particular direction, but the more error there is in your data, the more errors there's going to be in your bottom line.

Q. Have you done any other litigation consulting work that we haven't -- haven't discussed or areas that we haven't discussed? I don't expect you to tell me every case, but subject areas? 10:49:30

A. Discrimination cases.

Q. Okay. Let's talk about those. How many cases have you testified for the plaintiff?

A. I'm not sure. I did Cicero, Illinois for the Justice Department, their plaintiffs. And I did maybe a couple of defense. I'm doing one now that -- it's one company, but it's lots of plaintiffs. 10:50:00

Q. Okay. And you're representing the company or the plaintiffs in that case?

A. I'm doing the --

Q. Or not representing, but you're doing

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consulting work for the company or the plaintiffs in that case?

A. This time, it's the company.

Q. Okay. What were your conclusions in the Cicero, Illinois case? 10:50:30

A. That the labor force in that town, which has never had a black employee in the city government, could not possibly have occurred through a random draw from the Chicago labor force.

Q. And your findings in this case are based on statistical evaluation of population studies in the area; is that correct? 10:51:00

A. Yes, and employment patterns.

Q. Okay. Did I interpret you right? Is that the only case that you remember testifying for the plaintiff, as far as discrimination, where your other cases, were you testifying on behalf of the defendant in the case?

A. Some of them I'm not exactly sure who I did it for in Ohio. 10:51:30

Q. Okay.

A. But I know I had -- the major case in Chicago with lots of plaintiffs is definitely defense. I had a termination of a corporate president that was defense and some I'm not sure

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whether plaintiff or defense. I do the same analysis no matter who it is.

Q. Okay. What was your conclusion in the case involving the termination of the president?

A. This was valuing the stock options and other financial perks. And I came up with a lower number than did the plaintiffs' experts. 10:52:00

Q. Okay. So that was basically -- it was economic evaluation?

A. That's correct.

Q. Okay.

A. Not whether he -- whether he was fired unjustly, but given the fact that he was fired, if it was unjust, how much do we have to pay him.

Q. Right.

So you were more on the damages side of the case, correct?

A. All these were essentially damages, except for -- 10:52:30

Q. The Cicero, Illinois?

A. -- Cicero.

Q. These include -- I mean, we've been talking about discrimination cases. I mean, are you lumping the wrongful termination cases in that --

A. Yes.

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Q. -- in those same discussions we're having?
A. Let's put them all in the same --
Q. Okay.
A. -- since that's what people are claiming.
Q. Okay. So what I'm asking, I guess, basically, are there any other -- are there wrongful termination cases that we have not discussed, other than the ones that we were talking about when we're talking about discrimination? 10:53:00
A. Just the couple in Ohio and I'm not sure what -- whether plaintiff or defense. I don't remember.
Q. Do you remember what your conclusions were in that case?
A. Just present value of lost earnings, so I just did the usual thing.
MR. FISHER: Okay. I think we're about out of tape, so let's take a break here. 10:53:30
THE VIDEOGRAPHER: We're off the record.
(Recess taken.)
THE VIDEOGRAPHER: We're back on the record. 10:54:00
10:58:16
Q. (BY MR. FISHER) It's my understanding in reading some of your previous testimony that with regard to the research that you did regarding risk

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assessment of individuals who smoke, you were retained by Jones Day to do this work; is that correct? 10:58:30

A. It depends on the work. So I originally was contacted by Jones Day to discuss risk assessment. And then I subsequently obtained the audits and surveys data from them. 10:59:00

The work I did on that data for my publications using the audits and surveys data was not supported by Jones Day, although they supported my prior work on, you know, thinking about risk assessment.

The survey I ran in North Carolina was not supported by Jones Day or any other cigarette-related group. And I've since obtained the new audits and survey data. Only some of my time on that I'm billing to them. Some time I'm not. So a work related to an article, I'm billing. 10:59:30

Q. How are you deciding which amount of the work you are billing and which amount of the work you aren't billing?

A. Well, I'm sitting down and writing an article -- which I haven't done yet, but when I'm doing that, that would not be billed. The work that I spent to develop some cross-tabs of the data was

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billed to them, but the fancier statistical work, like regression, the kinds of things that would appear in an article, were not billed to them. 11:00:00

Q. Taking all your work done from -- I believe you started doing this in the mid-'80s; is that correct?

A. I was first contacted in the mid-'80s.

Q. The mid-'80s to now, how much approximately have you billed Jones & Day for your work on this issue? 11:00:30

A. I really don't remember, but a number like $100,000 wouldn't be unreasonable. Less than that wouldn't be unreasonable. More than that wouldn't be. A number like 500,000 would be way out of sight, you know, much more than I billed. 11:01:00

Q. Could it be as high as 200,000?

A. It might. I'm not sure.

Q. Do you keep any files regarding the amount of money you receive on your consulting work versus amount of money you receive on grants versus the amount of money you receive from the university for research? I mean, do you keep track of where you bill your research to and for what purposes this money goes to research? 11:01:30

A. I do for tax purposes every year.

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Q. And for your tax purposes, you have no recollection or -- of the amount of money that you've billed -- billed Jones Day since the mid-'80s to now regarding this research?

A. Well, 10 years ago is a long time. I think it would be a matter of speculation for me to try to guess and add up what I got ten years ago, nine years ago. I know the general ballpark, in terms of orders of magnitude, but I don't recall the exact amounts. 11:02:00

Q. And it's your best estimate the general ballpark is around 100,000?

A. No. I'm saying that could be a reasonable estimate. It could be more than that. So I really wouldn't want to lock into that as an exact number.

Q. Do you still have those records regarding your billings to Jones Day for this research? 11:02:30

A. I don't know. I'd have to look, but all my old records are in storage in a warehouse.

Q. Is it important for the credibility of your studies and your work to keep the information of who actually funded the research?

A. Well, my research has never been funded, so anything relating to publications is not funded. 11:03:00

Q. Okay. Well, let me ask you this. I mean,

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you have performed research and published articles based on monies you've received from grants, correct?

A. Oh, you mean like U.S. EPA grants, yes.

Q. Yes. 11:03:30

And you have used money from endowment founds at, let's say, Harvard or Duke, to publish and do research, correct?

A. That's correct.

Q. And Jones & Day has paid for part of the research that you've done on this issue that you're testifying in this lawsuit, correct?

A. Well, it's not academic research. They've never paid for any of my academic research publications or any of the work on those publications.

Q. Have you ever used any of the information that you've charged Jones & Day for in your 11:04:00 published materials that you've written?

A. I'm not sure that it breaks out that nicely. So where I get a number that I billed them for, then this number shows up later on. Conceivably I could report the mean values of variables, so when I got the audits and surveys 11:04:30 data, we calculated the means of the different

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variables and we'll probably do that again for the particular sample that I'm using for the article so that that would be redone and not -- they would not be billed for it.

Q. Let's talk about a little bit with your work with regard to the risk assessment and your studies and audits that you've reviewed and -- I mean, what have you billed Jones Day for with regard about work? I mean, what type of work have you billed them for? 11:05:00

A. I reviewed at least seven volumes of depositions and did a comprehensive review of the literature on cigarette economics, for want of a better term. I did that back in the 1980s. 11:05:30

More recently, the main thing I've done was to indicate how -- how my analysis might be applicable to their lawsuits.

Q. Anything else?

A. Those are the main areas. 11:06:00

Q. Okay. What -- the seven volumes of depositions you're talking about that you reviewed, whose depositions were they?

A. Jeffrey Harris.

Q. And was he a plaintiff?

A. He was the expert for the plaintiffs.

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Q. And on the Mississippi case?

A. Cipollone. He's in a number of these cases as well. 11:06:30

Q. Okay. What articles did you review?

A. This was 10 years ago, so I don't -- you know, it's a lot of articles and economics literature dealing with cigarettes and articles on risk perception to see what they said about cigarettes and how, based on my knowledge of how people think about risks, what I thought of them.

Q. And do you -- did you use any information in these articles for your -- the books that you've written or the articles you've written regarding smoking and risk assessment? 11:07:00

A. It's conceivable that some of the articles I read might appear in the bibliography of my smoking book, but there is no report or anything that I did that appeared in that book, so there's no text or not a single word I wrote for Jones Day, if I wrote anything, would have been in that book. 11:07:30

Q. Did Jones Day ask you to review these articles or did you review them on your own volition?

A. They asked me if I would take a look at them and see what I thought.

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Q. So they picked the articles that you reviewed in this situation, the work you billed them for?

A. They had a whole file and inventory of all the things they were able to find on risk perception and cigarettes. They were quite broad, in terms of the scope, so I looked at those, government reports, things like that.

Q. Did you write a report with regard to your findings after reading those articles?

A. I think mostly it was just discussion.

Q. Okay. And did you -- who did you discuss these articles with at Jones Day?

A. Primarily with Barbara Kaser.

Q. Okay. And is she an attorney with Jones Day?

A. She was.

Q. Is she still working with Jones Day?

A. No.

Q. Have you talked to her recently?

A. Last year, last fall.

Q. What was the purpose of your conversation?

A. She wanted my CV and bibliography in case she had jobs that were appropriate for me.

Q. Where is Barbara Kaser practicing now?

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A. In Connecticut.

Q. What type of practice does she have?

A. I think she's with United Technologies. I'm not sure. She may be with a law firm representing them. 11:09:30

Q. Is she doing defense work there; do you know?

A. Well, if it's for the company, it would be defense.

Q. Obviously. Well, I'm just saying --

A. Yes.

Q. -- if it's private practice, is it -- is she in the -- what role did she play in your research during the 1980s?

A. She was the main contact person. I met a number of Jones Day lawyers, but she was the main 11:10:00 contact person I had with Jones Day at that time.

Q. Is Barbara mentioned in any of your books?

A. I don't know if I thanked her in my smoking book in the forward. I do.

Q. How did you meet Barbara Kaser? 11:10:30

A. She called me up or somebody from Jones Day called me up and there was a group of Jones Day lawyers I had lunch with when they were in town in Chicago.

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Q. What precipitated this meeting? 11:11:00

A. I don't know. It was just a phone call out of the blue, as far as I was concerned.

Q. Had you ever contacted any of the tobacco companies before being contacted by Jones Day?

A. No.

Q. What research had you done at that point when they contacted you about smoking and risk assessment? 11:11:30

A. I had done a large amount of work on smoking -- not on smoking, on risk perceptions generally. So I had done -- what, at least a decade's worth of work at that point on how people think about risk and how it affects behavior. 11:12:00

And I was engaged in work on how smoking status affects attitudes towards job risks. But at the time, I had done no work on smoking risk perceptions, per se, although I was using smoking risk perceptions in relation to my food cancer study.

Q. Whose idea was it to do the smoking risk assessment? 11:12:30

A. All we're doing is talking about risk. So essentially I would call if they wanted to pick my brain as to how do people think about risk and did

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that have any relevance to the litigation.

Q. And after -- after you had this meeting and they asked you if it had any relevance to the litigation -- 11:13:00

A. They never asked me, but I assume that, you know, they might be wondering if what I'm doing is relevant to their litigation.

Q. Well, when you first met with them, did they ask you -- did they ask you whether you would be interested in testifying in any tobacco litigation or did they just say, Hey, we just want to hear your views on some subjects or, I mean, what -- I mean, what was the purpose of their meeting? What did they say the purpose of their meeting was for? 11:13:30

A. Just to discuss risk issues. Testifying never came up.

Q. Had you -- had you done any risk assessment at that point related to smoking?

A. Well, this was work on risk perceptions, but I had not done -- I don't think I had done risk perception work specifically related to smoking, although it may have been part of my food cancer study. 11:14:00

Q. Okay. What do you mean by "risk

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perception?" Define that for me.

A. How do people assess risks. What, for example, is the probability of death from smoking. How do people think about it.

Q. Were you requested by the Jones Day's lawyers to do some research on risk perception during this meeting? 11:14:30

A. No. We had lunch.

Q. Did -- after this meeting, did you determine on your own that you would like to do a study on risk perception?

A. No. We just had lunch, you know, so I --

Q. Okay. Let's go on forward. At what point did you determine that you wanted to do a study on risk perception?

A. After I discovered the audits and surveys data, it struck me that this would be an excellent data source to analyze. 11:15:00

Q. Who informed you that this data was available?

A. I found it in their files. They didn't inform me.

Q. Do you remember who gave you the files to look at? 11:15:30

A. Barbara Kaser.

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Q. Okay. Did she inform you -- did Barbara Kaser inform you that they had done audits and surveys -- or audits and surveys had been done by Jones Day and would you like to look at them? Is that what she informed you of?

A. No. I found it myself in the files. So it was -- among the documents, they had the survey.

Q. Okay. What did they ask you to look at the files for? 11:16:00

A. I was taking a look at the kinds of things they had and to see how they related to risk perception, to see if they had any interesting information.

Q. At that point, had they asked you to render an opinion on risk perception?

A. No.

Q. Had Jones Day paid you any money to review these files?

A. I always get paid when I'm doing work.

Q. Okay. Well, I would hope. That's what I'm asking. I mean, did they just hand you some files and say, Hey, we're going to pay you $425 an hour to look through these files and see what you think? I mean, did you have any goal when they gave you these files to look at? 11:16:30

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A. Well, it was less than that then, but -- in terms of daily rate -- or hourly rate, but the purpose was just to -- you know, intellectual curiosity to see what they had on risk perception, see what articles they had amassed. They had lots of articles that I had read already, well-known articles in literatures done on how people think about risk. 11:17:00

Q. So -- so the reason that you did this work is you had intellectual curiosity about articles that had been written in -- about tobacco products or about risk assessment and Jones Day was willing to pay you a certain sum an hour for you to fulfill this intellectual curiosity? 11:17:30

A. Well, risk analysis of various kinds is what I do, so it was interesting to me to see what they had on cigarette risk perceptions.

Q. Did you ask them if you could look at their files or did they ask you to look at their files?

A. They -- they were the ones who indicated that they had a stack of things that they had amassed on this general class of issues. They wanted to know if I wanted to take a look at it. 11:18:00

Q. Okay. And your position was, yeah, I'll

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look at it, as long as you pay me a certain sum an hour; is that correct?

A. I didn't ask them that. I was sitting in their office in Cleveland.

Q. Okay.

A. I didn't say -- you know, I said, Sure. I'll take a look at what you've got.

Q. Did you arrange for any -- I mean, did you make any agreements as to what you would be compensated an hour at that time? I mean, you say you always get paid, so I'm wondering is it at that point -- is that when you made an agreement as to what you would work an hour for? 11:18:30

A. I'm not sure when we made the agreement, but it was not -- I'll go into your background and look at your files if you pay me per hour. There was nothing like that going on. I was already being paid to show up to talk to them in Cleveland. So if I'm going to go to Cleveland, which is not exactly a resort town, then I would want to be compensated. 11:19:00

Q. What was the goal when you -- well, let me ask you this.

How long was it before this lunch that you had your first contact with Jones Day, and the time that you had this meeting in Cleveland?

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A. I really have no idea. It could be half a year. It could have been right away.

Q. You have no recollection as you sit here today?

A. That's correct.

Q. When you -- how long did this meeting last in Cleveland, this first meeting? 11:19:30

A. I flew in in the morning, flew back in the afternoon.

Q. Did you take the materials with you that they gave you?

A. I indicated there were certain things that I found interesting and I wanted a xerox copy of them to review.

Q. Do you still have the materials that you reviewed in that first meeting? 11:20:00

A. Some of them I may. I may have some of these articles. I don't know which ones came from that meeting, but --

Q. Do you have it filed in such a way -- do you keep your files in such a way as keep dates as when you get information or who gives it to you or things in that manner?

A. No.

Q. What was the goal of -- what did they ask

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you to do after you reviewed these materials? 11:20:30

A. They just wanted to talk to me about risk and what I thought about risk perceptions, how people think about risk.

Q. Did you provide any written report to them at that time?

A. No.

Q. How long did it take you to review these materials that they gave you? I mean, was it -- was 11:21:00 it a large amount of materials or -- I mean, did it take -- was it an amount of materials that took you weeks to review or what was -- how long did these materials take for you to review?

A. I don't remember. It was days, not weeks, but it was more than one day.

Q. Who did you contact after you reviewed these materials to give them your conclusions?

A. We just -- it wasn't so much conclusions. Just another general open-ended bull session with 11:21:30 Barbara Kaser.

Q. Okay. Did you travel up to Cleveland for this bull session the next time?

A. I don't know whether I traveled, she came, or we did it by phone. It was a long time ago.

Q. Okay. Are we talking 1982, '83?

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A. Maybe '85.

Q. '85?

A. I'm not sure.

Q. Okay.

A. I was still at Northwestern, if that pens -- you know.

Q. Yeah.

A. So it was before -- I think '85 is when I went back to Duke, so it would probably be around '83, '84. Is that right? 11:22:00

Q. I believe you testified in previous depositions that you had been trying to get your hands on the audits and surveys that Jones Day performed for several years; is that correct?

A. I'm not sure it's several, but my best guess is at least a year. When I was looking through the files, I came across the audits and surveys survey and I said, you know, this looks -- the survey looked really interesting. 11:22:30

And sometime after that, I think I got the sample means and then I asked, Could I have the original data? You know, the data tape. And that's when there was a long delay before I got it.

Q. How long did it take you to review the data that was provided to you after you looked at 11:23:00

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the -- I guess the survey that had been prepared?

A. I think you do it all in an hour, you know. Here are the 20 questions. Here are the means you get from them. So it was not a big analysis. So there was some analysis done, but it was a short -- maybe a 20-page summary report.

Q. Would it be a true statement to state that Barbara Kaser is the one who informed you that this -- that the audits and surveys had been done? 11:23:30

A. Without her existing, I would have not known that the survey existed. So I found the survey and she was the one who told me what it was for, but she was the one who gave me access to the files where the survey was, so I'm not sure how you want to label that. 11:24:00

Q. Do you still stay in touch with Barbara Kaser?

A. Just the phone call last year.

Q. I'm looking at the -- in the preface of your book "Smoking: Making the Risky Decision." And it states in your book that -- the following: I would particularly like to thank Barbara Kaser for calling these data to my attention and for many fruitful discussion -- discussions on smoking issues. 11:24:30 11:25:00

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Would it be -- I mean, is that a truthful statement in this preface, that she called this -- these data to your attention?

A. Well, you know, she took me in an office, handed me the files where these data were. I found the survey text. Then she told me what it was. So I guess, you know, without her, I would not have known about the data. So this was my summary way of capturing it, so I think that's in the general spirit of what happened. 11:25:30

Q. Was that one of the items that they wanted you to review and give -- and be able to participate in a bull session about, was the audits and surveys?

A. I don't know. All I know that was one of the things that was in their files. 11:26:00

Q. And after reviewing these files, did you suggest to Jones Day that you would like to do further research based on the results of the audits and surveys?

A. At some point thereafter, not that day, I think. I said, you know, This looks like a gold mine of data and I want to get a copy of the original data base, if I could. 11:26:30

(Deposition exhibit marked, 1.)

Q. Okay. I'm going to show you what has been

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marked as Viscusi Exhibit Number 1. Is that your curriculum vitae?

A. And bibliography, yes. 11:27:00

Q. We've talked a lot about your -- about your full-time positions at various universities. I'd like to talk to you about some of your other professional activities --

A. Sure.

Q. -- that are listed on your curriculum vitae.

On the first one lists a National Academy of Sciences Panel on Aging and Society. It shows you were a member there from '78 to '79. What was 11:27:30 your work related to that?

A. I believe that was on the Social Security program and how it related to the changing age composition of society.

Q. Did you do any research on -- I mean, were you the one that performed research and formed conclusions on your work on this -- on this panel?

A. I wrote a paper as part of this panel. 11:28:00 It's listed as number 20 on my bibliography.

Q. Was this something that you were compensated for or --

A. Just travel expenses, I think. I may have

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gotten --

Q. You weren't paid a salary for serving on this panel?

A. If I was, it was not much, not memorable.

Q. National Bureau of Economic Research, '78 to '88, and '95 -- it looks like a dash. To present, I guess? 11:28:30

A. That's correct.

Q. You're a research associate. What types of research project have you done for them?

A. I've been involved in several bureau projects on pensions, insurance, and the most pertinent to this litigation is my cigarette cost paper.

Q. Who are -- who are the members of the National Bureau of Economic Research? Is that a governmental agency? 11:29:00

A. No. It's a private organization in Cambridge, Massachusetts and it includes economists from throughout the country. So this summer at their conference, they had at least a couple hundred economists show up. So it's a fairly large group. 11:29:30

Q. Who pays -- who funds this bureau?

A. They get most at their money off the overhead from government grants. I'm not sure if

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they get any other. I'm sure they get grants from insurance companies and the like, but I don't really keep track of their funding. 11:30:00

Q. The American Law Institute project on the enterprise liability for personal injury --

A. Somebody lost their microphone.

Q. Here it is. It just fell off.

A. That's a tort liability reform project funded by the American Law Institute. 11:30:30

Q. Are you still a member of that?

A. The project ended.

Q. When did it end?

A. 1991.

Q. Who -- is that a -- is that a private entity?

A. I think so. It's located in Philadelphia and I believe it's private. I'm not really sure.

Q. Do you know where the funding -- who funds this entity? 11:31:00

A. No, but I know it's a highly respected group, since most people have their restatement of the law of torts on their shelf, most lawyers who do torts.

Q. Yeah.

And they're -- and they're the ones who

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are responsible for -- for formulating restatement?

A. Yes. It's the same group.

Q. What type of work did you do for this group?

A. I wrote or co-wrote the chapters on product safety and regulation and contributed to other pieces of the report. 11:31:30

Q. What were your conclusions of this work or research?

A. Well, the main conclusion was that if a company has fulfilled its safety obligations through complying with government regulations, that they should not be subject to subsequent liability in the courts. 11:32:00

Q. So your position regarding products liability or tort liability is, is that if you meet the government standards, you've done all you're required to do legally?

A. If it's an efficient standard and an explicit standard, so it depends on the standard. So in the case of hazard warnings, I would recognize this for FDA standards, but not necessarily for OSHA warning standards, because they're not precise. 11:32:30

So in our report, the consensus view that we advocated there is that there should be no

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punitive damages if you're in compliance with a specific government regulation.

Q. But your conclusions are, it is satisfactory, in your opinion, to find a company liable for actual damages, even if they are in compliance with governmental regulations? 11:33:00

A. Well, there's the report's view and then there's the consensus view that we got through everybody including plaintiffs' advocates and then there's my view.

My view is that we have an explicit government regulation that mandates a level of safety that is at least at the efficient level of safety. Then if you comply with that regulation, you should not be liable for damages as well, if you're -- because that shows that you would not have been negligent. 11:33:30

Q. Do you know -- do you know who funded the research that you did in this area?

A. Well, I know the American Law Institute paid me. I don't know where they got their money. 11:34:00

Q. How much did they pay you for this research?

A. I don't remember. It was better than the National Academy of Sciences, so we got paid, but it

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was much less than you'd make consulting.

Q. The Brookings Institution, Civil Liability Project, describe what your work was there. 11:34:30

A. I did two papers on product liability. I'm not sure what they were, but we can look them up on the vitae. One had to do with product liability and innovation. Another one may have been just liability insurance trends.

Q. Do you know who funds the Brookings Institution?

A. It's a private liberal think tank, so I'm not sure where their funding comes from, but they're 11:35:00 known as a liberal think tank.

Q. What were your -- what were your conclusions in this research that you did?

A. Excessive product liability penalties can discourage innovation and introduction of new products, was one conclusion.

Q. Any other conclusions or basic conclusions 11:35:30 you had in this research?

A. I'm sure there are lots of them. It's hard for me to distinguish what was in these papers as opposed to my work.

Q. You have the next, U.S. Environmental Protection Agency Science Advisory Board. I know 11:36:00

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we've talked a little bit about that. Are you still doing work for them?

A. For the Clean Air Act Compliance Analysis Council, I resigned as a member and became a consultant in the fall. For the Economic Environmental Economics Advisory Committee, I'm still on as a member. 11:36:30

Q. Okay. You have here that once, a subcommittee you served on looked at the acid rain issue; is that correct?

A. Yes.

Q. What were your conclusions regarding acid rain?

A. We were just reviewing the benefits analysis that was done for EPA and highlighting how it could be done better.

Q. What suggestions did you make on this benefits analysis? 11:37:00

A. I don't recall. This is 10 years ago, so --

Q. How about the work you did on lead pollution?

A. Same story line, so we looked at benefits. I'm not sure what we said about them. In this case, there were human health effects. With acid rain, there was not. The acid rain was mostly

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just damage to paint on people's houses.

Q. Do -- do you generally support the legislation regarding the Clean Air Act? 11:37:30

A. Well, I support enough of the environmental work for them to be hiring me continuously for the past decade, but I do not support the portion of the act that says the EPA cannot look at costs when setting ambient air quality standards. 11:38:00

Q. Is that your position on most EPA regulations, that you criticize the legislation in that the EPA cannot look at costs in setting the regulations?

A. Well, for Superfund, our criticism is more fundamental, in that they ignore people as well. So our main message for EPA has been that they should consider the populations at risk in their cleanup efforts so that -- currently, they're not giving priority to cleaning up sites where there are exposed populations as opposed to sites in the middle of nowhere where there's nobody exposed to the risk. 11:38:30

Q. So your position is they should -- they should be cleaning sites up where people are actually being exposed rather than cleaning up sites

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where there is no exposure for people at this time? 11:39:00

A. That's correct.

Q. Okay. And prioritize the cleanup efforts or should they completely -- or should they completely disregard cleaning up the sites where people are not currently living?

A. Generally, you'd prioritize them, but it may be that if nobody is living there, nobody will live there, and there's no risk, for example, of contaminated groundwater, that you could simply cap 11:39:30 the site and have institutional controls, fence around the site, which is what Duke University, for example, does with its waste from its chemistry labs.

So they put it out in steel drums, cover it with clay, put it in monitoring wells, fence it. And that's where the hazardous waste is.

Q. The next on your curriculum vitae is Corresponding Group on Safety Policy. Describe that 11:40:00 work, please.

A. The Canada -- Canadian Academy of Engineering, which I guess is the analogue of the National Academy of Sciences, their Royal Society, just put me on their corresponding group to advise them on safety issues so they would send me things

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in the mail and I would react to them, but there has not been a lot of mail. So this is not a big thing.

Q. Okay. So you don't -- you basically are not doing any research projects at this time for this -- for this group and -- 11:40:30

A. That's correct.

Q. -- your affiliation is limited?

A. That's correct.

Q. American Enterprise Institute, 1993 to present, what are you doing there?

A. I've done occasional papers for conferences they've had where I've published an article in their magazine, but no major commitments.

Q. Okay. The Wharton School, Public Management External Review Committee, and Advisory Board, Risk and Decision Processes Center, 1994 to present, what are you doing for the Wharton School? 11:41:00

A. They have an external visiting committee to assess their program in the public management area. I was a member of that. And I'm a continuing member of their -- of the board to advise their center that deals with risk and decisions. 11:41:30

Q. What topics have you -- have you -- what topics have you reviewed in this capacity?

A. Mostly Superfund risk, but I even

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suggested that they might want to take a look at the cigarette litigation.

Q. Are you planning to have any discussions with the Wharton School regarding funding of cigarette research? 11:42:00

A. It's conceivable that they might draw me in, but I have not discussed it with them. I have just -- they want suggestions -- sugguestions for topics and I suggested that topic.

Q. But at this time, no -- they have not made a comment whether they want to work with you on that topic? 11:42:30

A. I just sent in the suggestion last week.

Q. Okay. I'd like to talk a little bit about some of the books that you've written. "Damming the West, I" think is the first one that you've listed. What is the topic of that book? 11:43:00

A. That is a critique of the dam-building activities of the Bureau of Reclamation in the west.

Q. When you -- I mean, let's talk in general of all these books. When you've published these books or have these books published, is this something that you submit to the publisher and they decide whether they want to publish it or not or do you pay for its publishing or -- I mean, what is the 11:43:30

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financial arrangement in getting these books printed up and sold?

A. I have never paid to publish any book or article.

Q. Is the publisher paying the costs for that?

A. The publisher pays the costs, and in some cases, they pay me. 11:44:00

Q. Okay.

A. It depends on how much, but most of these I get royalties.

Q. Okay. And what is your royalty interest in these books?

A. It depends on the book, so --

Q. I mean, it just depends on the general -- on each book is a different deal or do you have any relationship with a particular publisher that --

A. I seem to have continuing relationships with Harvard, MIT, and Oxford Press. Those seem to be the main ones I deal with. 11:44:30

Q. And what royalty agreements do you have with them?

A. I forget. It's 10 to 15 percent royalties. In some case, we get advances. In other cases, we don't.

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Q. Do you have any idea how much you've been paid in royalties for "Smoking: Making the Risky Decision"? 11:45:00

A. Not much. It sold -- what, a couple thousand copies? So what I did make? 4,000, $5,000? I don't know. That's a pretty good sale for a technical book.

Q. Okay. How about the book "Fatal Tradeoffs"?

A. Probably similar, although both of these books are still selling, so these are both more technical books. I have other wider-audience books that sell more. 11:45:30

Q. What -- do you know what -- how much you got paid for writing this -- did someone pay you for writing this book?

A. Just the -- Oxford gives you royalties. I didn't ask for an advance, I don't think, on the book, because I knew they were going to publish it. So I didn't get a stipend to write the book. I just did that as part of my academic work. I believe I was on sabbatical at Duke when I wrote both of those books, but I stayed at Duke to write the books. 11:46:00

Q. Okay. And were you compensated by any of the grants that you have or any of the -- any of the

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people that have funded you through the years, your research, did they help pay the cost and pay you for your time in writing and publishing these books?

A. Well, I get my summers paid for by EPA, at least I did during this interval. And some of "Fatal Tradeoffs" is related to a report I did for the U.S. Department at Transportation. But the writing of the book itself, nobody paid for the writing of the books. 11:46:30 11:47:00

Q. And that's -- and just so we'll know, we're talking about "Smoking: Making the Risky Decision," that book, and "Fatal Tradeoffs"?

A. That's correct.

Q. Okay. Was "Damming the West," was that a more widely read audience, whatever, in that book?

A. That one was a book that was reviewed by New York Times book reviews. That would be a more trade-oriented book and the largest recent seller is "Economics of Regulation and Antitrust," which is a textbook used at over 100 schools. 11:47:30

Q. How about "Welfare of the Elderly"?

A. That sold out its printing, between 2- and 3,000 copies. It was based on a study that we did for what is now called the Department of Health and Human Services. 11:48:00

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Q. And what were your conclusions of that book?

A. Old people are on the way, in terms of the demographics, and that society should do a better job of funding Medicare and Social Security to prepare for the bulge of the age in population that was going to be coming.

Q. What changes did you suggest be made -- be made in the funding of Social Security and Medicaid and Medicare? 11:48:30

A. Well, one way or another, they had to increase the funding base or decrease the benefits. So I didn't distinguish which, but I did say that they should be more farsighted in their funding.

At the time this was written, you know, almost 20 years ago, the prospect of the baby boom hitting retirement age was something nobody cared about. And my concern was that unless they made adjustments in their funding, that generation of people would have a Social Security system that was bankrupt. 11:49:00

Since that time, they've had national commissions investigate both Social Security and Medicare and they've changed the financing. They've increased the tax.

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Q. Have you served on any of those commissions?

A. No.

Q. Have you been asked to serve on any of those commissions?

A. No. I stopped doing work on this topic in the 1970s. I just have not pursued it. 11:49:30

Q. Do you know if any of your research or studies were used by those commissions in their work?

A. I don't know.

Q. "Employment Hazards: An Investigation of Market Performance," was that more of a trade book or was that something that was -- or textbook or was that something that was widely read?

A. That was a technical monograph. That was a Harvard economics dissertation designed to score 11:50:00 me points in the academic community as opposed to selling books.

Q. And who in the academic community did you target this book for?

A. Well, first of all, I wanted to win the prize for best Harvard thesis, which I did. And once it was out, I just wanted it to be read by labor economists and other people doing work on

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risks. 11:50:30

Q. What -- what were your conclusions in this book?

A. Many work -- risks on the job workers perceive, as the market responds to perceived risks, in terms of compensating differentials, in terms of higher wages.

In some cases, workers don't know what they're getting into, but often when they do, they learn about the risk on the job. Then they quit 11:51:00 after they see how risky it is. So I show that there's a high quit rate in hazardous jobs.

Q. The next book, "Risk by Choice: Regulating Health and Safety in the Workplace," it looks like it was published in 1983. Was that -- is that a book that was published to be used as a textbook or a trade book or -- 11:51:30

A. This was the more readable counterpart of book number 3, but I also discussed job safety regulations, how you should set the stringency of safety standards.

Q. What are your -- what were your conclusions about safety regulations with regard to the workplace?

A. A number of conclusions. Some relating to

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how you should set regulations efficiently. Other conclusions that to create incentives for safety for firms, that you needed a much more frequent inspection rate than OSHA had at the time. 11:52:00

Q. What factors go into making health regulations in the workplace more efficient?

A. Well, you want them directed at real risks that people are actually injured by. So that's the benefits side. So you care about the probability, decreasing the probability of risk. And then on the cost side, you want to do it at the least cost. So it was both of those considerations going to efficiency. 11:52:30

Q. Should either of those factors be weighted more heavily than the other?

A. No. They're symmetric, if properly assessed. 11:53:00

Q. "Regulating Consumer Product Safety," was that book written with respect to your work with various commissions or boards or whatever on product liability safety?

A. No. This was just a report I did analyzing consumer product safety commissions regulations. 11:53:30

Q. And what were your conclusions in this

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book?

A. Well, this is not the best known of the government agencies because they don't accomplish a lot. Mostly they regulate children's toys.

And I criticized the safety cap regulation, which they had touted as being child proof, because a lot of people left these bottles around the house leading children to be exposed. So there was actually a rash of poisonings of children after the safety cap standards went into effect. 11:54:00

Q. What are -- what were your conclusions that the safety cap standards actually increased the amount of poisonings of children?

A. In the case of the aspirin ones, it was basically a -- there's a break-even effect. In fact, I looked at the safety cap standards for every product for which there were child-resistant caps at the time and found that there was no significant effect on safety. But at the time, there was an increase in the poisonings from related products, such as Tylenol. 11:54:30

So my conclusion is that people became more lax about safety because of these particular safety devices. This isn't true more generally, so I've done articles on cigarette lighter safety,

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which come out differently.

Q. Would it be fair to say that your position is, is that -- is that child safety caps should not be used? 11:55:00

A. No. My position was that the government should tell people that even if we have child safety caps, this does not guarantee that the product is risk-free and you still have to exercise precautions.

Q. So were you supporting further warnings to be placed on medications in which the government had regulated child safety caps?

A. That could be one thing, but most importantly I'm encouraging the Consumer Product Safety Commission to go out with a message that they're not child-proof and to stop using the terminology "child-proof," which they actually did use in their press releases at the time. 11:55:30

Q. Was it your position that that would be misleading, to call it "child-proof"?

A. If you called it "child-proof," then people think it's totally safe and you don't have to worry about keeping medicines out of the reach of children, for example. 11:56:00

Q. Looking at the sixth book on your list,

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"Learning About Risk: Consumer and Worker Responses to Hazard Information," that book was published in 1987; is that correct?

A. That's correct.

Q. What were the conclusions in this book?

A. This book provided guidelines for the design of hazard warning labels and the main result is that warnings only have an effect if they provide new information in a convincing manner. So warnings that are simply reminders will not have an effect. 11:56:30

Q. In your opinion, what -- based on these conclusions, what -- what should be implemented with regard to the design of hazard warnings? 11:57:00

A. Well, it depends on the context. We tested several alternative labels for bleach and pesticide or bleach and Drano, I think in this study. And we showed the warning mechanisms that we thought were most effective.

MR. FISHER: We have about 25, 30 minutes. 11:57:30

MR. ATKESON: You okay for another 25, 30 minutes?

THE WITNESS: Can we bring the food in?

MR. ATKESON: We're going to have sandwiches.

THE WITNESS: Good. Good. That's fine.

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I look forward to that.

Q. (BY MR. FISHER) Was it your conclusion that with regard to the products, the bleach and the Drano, that the warnings were adequate or inadequate?

A. Well, it depends on the brand. In the case of bleach, we thought the Kroger brand of bleach, called Bright Bleach, had an adequate warning, but the Clorox bleach was not particularly effective. 11:58:00

For drain opener, we tested warnings we designed and showed which ones mattered and which ones didn't. But generally the Drano label, I think, is actually pretty good.

Q. Who requested that you do this survey on bleach and Drano? I mean, how did you choose these products to do your research on? 11:58:30

A. It was for two offices at EPA. One was the pesticides office and bleach is a pesticide, classified by EPA, because it attacks mildew. And Drano was selected because the people at EPA who regulate toxic chemicals thought that was a high risk chemical, so we used drain opener. 11:59:00

Q. Did you support the addition of -- or more stringent warnings to protect children from

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poisoning from these products?

A. We wanted good formatting of information, including the risks to children, so that would be among the risk the people understood concerning the products. 11:59:30

Q. The next book you have here is "Compensation Mechanisms for Job Risks: Wages, Workers' Compensation and Product Liability." What were your conclusions in this book?

A. Well, in addition to the familiar one about risky jobs commanding higher wages, we showed two results. One is that workers' compensation, in part, pays for itself, because workers accept lower wages in return for higher workers' compensation benefits. And second, workers' compensation is a powerful mechanism for promoting job safety. 12:00:00

Q. What factors did you use to determine that workers' compensation was a powerful type of insurance to promote safety? 12:00:30

A. We analyzed risk levels by industry and by state and showed that states with high levels of workers' compensation and enterprises that paid high value of workers' compensation benefits greatly reduced their risk levels.

Q. Did you do any analysis as to which -- how

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much -- let's see. Strike that. 12:01:00

You did any -- did you do any analysis on the costs of workers' compensation insurance?

A. Yes. That was part of the wage offset business.

Q. Did -- did you determine whether the cost of workers' compensation insurance was -- was fair, considering the amounts paid out by insurance companies?

A. We concluded that workers' compensation, on average, paid for itself. 12:01:30

Q. And by paying for itself, meaning paid for itself for the -- for the employer or the -- or the person issuing the insurance?

A. For the employers. So the wage offset that workers were willing to accept in return for workers' compensation benefits exceeded the value of the premiums that employers paid.

Q. "Enterprise Responsibility for Personal Injury," what were your conclusions in that book? 12:02:00

A. This is the American Law Institute report for which I was an associate reporter. This is just a whole set of legal reform proposals.

Q. Could you identify some of the legal reform proposals?

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A. Some, in the case of hazard warnings, we advocated that there be a national warnings vocabulary. So standard -- there should be standardized criteria for judging hazard warnings.

I've already mentioned punitive damages and regulation. So that if you're in compliance with a government regulation, you should not also be exposed to punitive damages. 12:02:30

Q. Let me stop you on that issue right there. Would that -- would it matter to you whether -- whether the company had disclosed all the information that they had on a certain product or a certain service that they were providing to the government? If they had not provided that information to the government, should that affect whether punitive damages should be recoverable? 12:03:00

A. It could. So let's take the example of the FDA. If I have a prescription drug that's in compliance with the regulation, then according to this proposal, there would be no punitive damages.

Now, if I withheld information from the government agency, if this information would have altered the regulatory policy, then you wouldn't necessarily get the punitive damages defense. But if the information would not have altered, would 12:03:30

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otherwise allow to sell the product, then the same argument would apply. So it depends on the character of the information and what effect it would have had on the policy.

Q. Was this theory that you've just stated contained in your punitive damage conclusions with regard to your work with this entity? 12:04:00

A. I know we put in the caveats regarding withholding information. Whether we, you know, went on and said whether it's valuable information or worthless information, I'm not -- I don't think we went to that much detail.

Q. But in your opinion, a company withholding information is something that could be -- should be considered with regard to awarding punitive damages? 12:04:30

A. Well, companies withhold information all the time. You don't dump everything you have on the government, so the question is, did you withhold something that was truly important for assessing the regulation and would there have been a different regulation had this information been disclosed?

Q. Okay. And I think you've cleared it up a little bit, but -- so you're saying if they withhold information that could affect governmental regulation, then, in your opinion, the punitive 12:05:00

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damage protection should not be invoked?

A. Or it might not. It wouldn't necessarily be invoked.

Q. Okay. Do you have any idea who you suggest to make the determination on whether it should be invoked or not invoked? Did you-all get that far?

A. I'm not sure what this question is. Is this the same question?

Q. I guess what I'm saying is, who determines whether the information that was withheld was material to government regulation? 12:05:30

A. We didn't get this far.

Q. Okay.

A. This was the broad sweep.

Q. "Reforming Products Liability," is that basically the same thing as number 8?

A. The difference is this is just me, whereas number 8 is me and a cast of -- you know, other people.

Q. What reforms did you suggest in your book "Reforming Products Liability"? 12:06:00

A. Pretty much the same kinds of things, in terms of regulatory compliance mattering and that there should be more recognition of the competing

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effects of different governmental institutions.

Q. What do you mean by that, "competing" and "government institutions"?

A. Well, in the case of asbestos, we had government regulations that were virtually nonexistant. Then the courts came in and awarded substantial damages. 12:06:30

The regulatory agencies jumped in. And after a period of underregulation, decided to overregulate. And so asbestos now is regulated at a cost of in excess of $100 million per life saved, which is over 30 times more per life saved than the Department of Transportation is willing to spend on any of its policies.

So that in the future, if you were to have an asbestos case emerging in this post-regulation era, then the fact that the company submit very, very stringent standards is something they should be given credit for. So, essentially, there should be more recognition of the role of other institutions. 12:07:00

Q. Have you done any research regarding the asbestos industry and the products they sold and the information that they provided to consumers and users of the products?

A. I've done some. I published an article on 12:07:30

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asbestos and it's listed here.

Q. Okay. Do you support the regulations that OSHA has made with regard to asbestos use and removal?

A. I think OSHA did too little for a long period at time. And that now that asbestos is being overregulated, in terms of the cost per life saved. So there's some uses that still may be beneficial. 12:08:00

Q. The next one, "Economics of Regulation and Antitrust," what was that book about? What were your conclusions?

A. That's our textbook. Everything the comments have to say about regulation and anti-trust.

Q. Okay. "Informational Approaches to Regulation," is that a textbook, also?

A. No. That's round two of our hazard warnings field studies for EPA. This one is on insecticide and some other product. 12:08:30

Q. What were your conclusions in this book regarding insecticide?

A. With all these warnings, we investigated things like label clutter and information overload. Essentially, if you provide too complex a message, people don't grasp the main message you're trying to get through. So you want to limit the information 12:09:00

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you provide.

Q. The next book, "Fatal Tradeoffs," what was -- what was this about? That was the smoking, right?

A. No. The next is smoking. The "Fatal Tradeoffs" is that government should strike a balance in its costs and benefits when thinking about risk policies.

Q. And what factors should be used in this analysis? 12:09:30

A. Well, on the benefits side, you have the probabilities of the different health outcomes that will be reduced, the number of people affected, the value of health outcomes.

On the cost side, you just have the expenses both by companies, as well as by consumers, that would be taken into account.

Q. Are your conclusions in "Fatal Tradeoffs" generally more stringent warnings or less stringent warnings on products? 12:10:00

A. Well, it's more related to regulation. So it would advocate more regulation for most agencies, such as EPA and OSHA. For the particular regulations they have, it would be either less stringent or different kinds of regulation, more

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flexible regulation. They gave companies the opportunities to pick the least cost alternative.

For an agency such as the Department of Transportation, more stringent regulations. So it depends on the agency. 12:10:30

Q. And which governmental agencies did you look at in writing this book, "Fatal Tradeoffs"?

A. Virtually all of them that regulate safety, the main ones being job safety, consumer products safety, environmental safety, highway safety. And U.S. Office of Management and Budget comes in as well. 12:11:00

Q. Okay. "Product-Risk Labeling: A Federal Responsibility," what was that book about?

A. That was a book on whether food cancer warnings and other labels, in general, should be regulated by the states or by the federal government. And I argued that labeling should be at the federal level to decrease the costs of having to produce products for every particular state and have standardized warnings across states that consumers could understand. 12:11:30

Q. "The Mortality Costs of Regulatory Expenditures," what were your conclusions in that book?

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A. This was simply to calculate, for regulatory expenditures, what the risks arising from these expenditures might be. So if you had an extreme case, where a regulation required that you dig ditches and fill them back up again, and did not have any safety benefits, there still could be some mortality costs. People could be injured during the process. 12:12:00

So for all safety regulations, when you require companies to spend money, you want to make sure that you save more lives than you lose with these expenditures.

Q. Did you -- which -- which type of jobs or occupations did you focus on? 12:12:30

A. This was done for every industry and economy, as well as the economy as a whole. And this was part of a study done for OMB.

Q. What -- let's move to your forthcoming books, "A Course in Risk." What is -- or have you finished that book or is it -- or have you started that book? 12:13:00

A. Now is a new title called "Rational Risk Policy" and it's been edited and it's going into page proofs. So it's being printed now.

Q. What are your conclusions in that book?

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A. Government agencies often mirror individual irrationalities so that government often overreacts to the same kinds of risks that people react to because of political pressures. That would be one of the conclusions. 12:13:30

Q. Were there any specific areas that you concentrate on in this book?

A. It's mostly a tour through my life work, so this was a series of lectures I gave in Sweden to cover what I knew about risk.

Q. "Environmentally Responsible Energy Pricing," has that been printed yet or is -- 12:14:00

A. I have stopped doing this book, so this book is history. But there's a new book replacing it called "Calculating Risks?," which is a book on Superfund from IT Press --

Q. Okay.

A. -- which is underway.

Q. Is that relying on some of the same work that you did to gather information for the "Environmentally Responsible Energy Pricing" or -- I mean, or are they just totally unrelated? 12:14:30

A. Totally unrelated, but energy pricing is not as hot as Superfunds. So Superfund is the book I'm doing.

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MR. FISHER: Okay. Do you want to take a break for lunch?

MR. ATKESON: Okay.

THE VIDEOGRAPHER: We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: We're on the record.

Q. Doctor, you have a number of articles listed in your curriculum vitae. I don't want to go over all of them, but one of -- there are some that I'd like to talk about. Number 26, "Presidential Oversight: Controlling the Regulators" -- 12:15:00 13:02:06

A. Right.

Q. -- I think you wrote that in the winter of 1983. Could you please tell me what your conclusions were in that article? 52011 1783

A. This was essentially an article talking about the oversight of government regulation by the U.S. Office of Management and Budget. And in the Carter administration was by the Council on Wage and Price Stability. 13:02:30

Q. What -- what was your -- did you take a stance on whether measures needed to be taken in controlling the Office of Management and Budget or did you -- did you take any position at all with regard to regulation in that article or did you just

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review what actions were taken by the OMB during the Carter administration?

A. I reviewed things. I supported regulatory oversight. I was a part of that effort in the Carter administration, so I supported our efforts.

Q. Number 39, "Environmental Policy Choice with an Uncertain Chance of Irreversibility," could you please describe what that article was about?

A. It was a theory paper analyzing the effects of a probability that a decision would have an irreversible environmental outcome and how that affects environmental decisions.

Q. What factors did you use to -- was this a risk analysis with regard to regulation or was it -- was it an overview of regulation as it applies to environmental risk or describe a little bit what it was.

A. I call it more a mathematical economic theory analyzing the effects of a probability of an irreversible effect on whether you should overregulate or underregulate or how you should design a policy.

Q. What irreversible effects did you concentrate on?

A. Let's say a firm makes a capital

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investment to comply with the regulation. That would be an irreversible investment.

Q. So the irreversibility is of the capital contribution, not the environmental risk; is that correct?

A. I've done it both. I've done irreversible environmental consequences, irreversible capital investments. I've looked at all these different things. 13:05:00

Q. Okay. Were there any particular irreversible environmental occurrences that you focused on?

A. I don't think I gave any examples.

Q. Okay. Number 44, "Consumer Behavior and the Safety Effects of Product Safety Regulation," could you describe that article and what it was about? 13:05:30

A. This is a statistical analysis of the effects of Consumer Product Safety Commission regulations on safety, including the safety cap regulations that we discussed earlier.

Q. Okay. Did this article mainly focus on the safety cap regulations?

A. That was about eight pages of it.

Q. Okay. What other consumer safety

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practices did it focus on?

A. Bicycle safety standards, fire safety. Essentially everything I could get data on. 13:06:00

Q. Did you focus -- did you focus more on risk to children or did you -- did you focus on risk to adults, also?

A. I did both, although the poisoning regulations I focused primarily on risk to children.

Q. The next article I'd like to discuss is "Uncertainty in Risk Analysis." What -- what was 13:06:30 that article about?

A. That was a study based on work we did for OSHA. We were asked to do one what are the times we first retrospective assessment of the government regulation and we found that the OSHA cotton dust 13:07:00 standard had been misassessed at the time of its promulgation.

Q. The next article, number 60, "Right to Know and Behavioral Responses to Hazard Warnings," could you please tell me about that article?

A. Well, around that time, there was the movement toward providing information, often designated the right-to-know movement. I wanted to characterize it somewhat differently as it being efficient to know as opposed to a right. So it's 13:07:30

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sometimes economically desirable for people to know.

Q. What factors did you use to determine if certain information would be economically beneficial?

A. Chiefly what people know already and will the regulations alter their decisions.

Q. Were there any particular hazards that you focused on in this article?

A. I don't recall. Maybe it dealt with the things from my book. So perhaps bleach was in there, insecticide. 13:08:00

Q. Number 62, "Product Liability Litigation with Risk Aversion"?

A. That's an article that analyzes product liability closed claims data to assess how the variation and payoff rates affects litigation.

Q. What were your conclusions in that article? 13:08:30

A. Plaintiffs are more likely to settle cases in which there is a high variance and a likely reward. So they're risky averse.

Q. Did you focus any of your research on defendants paying products liability settlements?

A. We looked at settlements, too. 13:09:00

Q. And what was your conclusion with regard to the defendants' perspective?

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A. I don't know the perspective. I just know in terms of the outcome, cases with a higher variation and payments were more likely to be settled. So that reflects the joint influence of both plaintiffs and defense.

Q. Okay. So the more uncertain a litigation or the result of the litigation, the more likely a case is to settle?

A. Yes.

Q. Number 64, "Doubling the Estimated Value of Life," what is that about? 13:09:30

A. This is the value-of-life line of literature that analyzes the compensation workers receive for job fatality risks. And this article explores how these numbers change using the new occupational fatality data. 13:10:00

Q. What were your conclusions in this article?

A. The new data developed by the National Institute of Occupational Safety and Health seemed to involve less error and they result in a higher estimated value of life.

Q. Number 72, "Pain and Suffering in Product Liability"? 13:10:30

A. This article also looked at the closed product liability claims data base analyzing the

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determinants of pain and suffering.

Q. What were your conclusions in this article?

A. Although juries have no clear guidance with respect to pain and suffering awards and how they should be linked up to underlying economic factors, the awards themselves were not entirely random, as they were correlated with the severity of the injury. 13:11:00

Q. Number 74, "Toward a Diminished Role of Tort Liability"?

A. That's the idea that government regulation should be taken into account when deciding what role tort liability should have. And in the case of toxic torts particularly, the emphasis should be on vigorous government regulation. 13:11:30

Q. Number 75, "The Interaction between Product Liability and Workers' Compensation as Ex Post Remedies for Workplace Injuries"?

A. There, I just analyzed the product liability claims data for job-related injuries to see whether people were more likely to settle these injuries -- injury claims, drop the claims, et cetera. 13:12:00

Q. And what were your conclusions?

A. Workplace injury claims are more likely to

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be settled, in part because it should not be a product liability claim, but instead a workers' compensation claim.

Q. If legislation was enacted to make it a workers' compensation claim rather than product liability claim, would that provide more money to the injured person or less money? 13:12:30

A. It depends on your prospects of winning in court. To the extent that you can claim successfully workers' compensation benefits, you have a higher probability of obtaining compensation than in a product liability case, but typically the size of the award would be less.

Q. But isn't it -- but isn't it also true that in most case -- in most states, workers' compensation insurance is no-fault insurance, and if 13:13:00 you're in the course and scope of your employment at the time you were injured, that workers' comp is going to pay for the medical expenses and lost wages of your injury?

A. It's certainly true of safety. In the case of health and things like carpal tunnel syndrome often is difficult to prove the links and to show that it's a job-related injury.

Q. Number 83, "Cigarette Smoking, Seat Belt

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Use, and Differences in Wage-Risk Trade-Offs," what's that about? 13:13:30

A. People who smoke cigarettes and who do not wear seat belts are more willing to work on hazardous jobs than those who do not smoke and who wear seat belts. 13:14:00

Q. What data did you rely on to make those assertions?

A. This is a data base developed by Joni Hersch, my co-author, based on a survey of workers in the state of Oregon, so it included lumberjacks, other high-risk industries.

Q. Who did you use to do the surveying in this project? 13:14:30

A. I think she ran it, so it was not a certain research firm.

Q. Number 88, "The Performance of Liability Insurance in States with Different Products Liability Statutes?"

A. This state -- this article simply reviews how the loss ratio, performance, the profitability, the premiums, the losses, varied, depending on the liability regime. 13:15:00

Q. And what did you use for your data in writing this article?

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A. In this case, I believe I used the rate-making files of the insurance service's office for product liability. 13:15:30

Q. How were you able to assess those files? Were they public record?

A. No, they're not. I was given them for research purposes.

Q. What was your conclusion in this article?

A. The liability regime matters. So, for example, tort liability reform does have an effect. Some people suggested that reforms won't matter because juries will simply adjust, but the character 13:16:00 of the liability law in the state does affect the performance of insurance markets.

Q. Did you always -- was there always a direct causal relationship between insurance premiums or the amount of insurance premiums versus the laws -- product liability law in a particular state?

A. Some mattered. Some didn't. I forget which ones were significant.

Q. Isn't it true that some states where tort reform has been enacted, actually premiums have gone 13:16:30 up?

A. It depends on the character of the reform,

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but this is in the -- this is pretort reform. The data here extended through 1984 and most of the tort reforms I think you're talking about were enacted in 1985, 1986, and 1987.

Q. Did -- have you done any more recent research regarding the amount of insurance premium versus the type of product liability law is in states? 13:17:00

A. Yes.

Q. Okay. And when was this article written?

A. Some of it's unpublished, but some of it's in an article in the Journal of Business and Economic Statistics, number 145.

Q. Okay. And what were your conclusions in this study? 13:17:30

A. Damages restrictions have the most consistent negative effect on product liability costs. Other changes in the legal regime also sometimes matter, but seem to be less consistently influential. 13:18:00

Q. Under your forthcoming articles, you have "Insurance Regulation as a Price Floor." What is that article going to be about? 13:18:30

A. That's an article which I'm hoping eventually to revise, which indicates that in states

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where we have strong price regulation for insurance, companies seem to be reluctant to ever decrease the price because it's harder to obtain approval for a price increase, if there's regulation.

Q. We talked a little bit before about the survey and audit that was performed in 1985 that you reviewed to form your analysis regarding risk perception in relation to cigarette smoking. 13:19:00 13:19:30

A. That's correct.

Q. Is that correct?

I think you testified before that it took you about an hour to read this survey and audit; is that correct?

A. And the supporting data, so, you know, it wasn't long. 13:20:00

Q. But yet you've classified this information as a gold mine of information; is that correct?

A. Well, as a potential gold mine, in that I knew that they had the survey questions and they had the answers to the survey questions and I wanted to have access to what the answers were, because it was a rich data set that include information on risk beliefs and personal characteristics on an individual basis. 13:20:30

Q. Who formulated the questions that were

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used in this audit survey?

A. I don't really know. I assume it's the survey research firm, but I know the law firm had input, because they picked lung cancer as the focus because that was related to the litigation they were engaged in.

Q. Do you know if -- what type of expertise is it -- is necessary to run a scientific -- scientifically effective study, like this audit survey? 13:21:00

A. It depends on which level. You need somebody to write questions. You have to have good survey questions. Beyond that, you have to have a suitable procedure for figuring out who you're going to talk to once you make contact with a home. And I've reviewed those procedures they had. And then you have to have some procedure, such as random digit dialing, to actually locate your respondents. 13:21:30

Q. How would you go about determining whether a question is an effective question or not?

A. Well, I do it because I've been running surveys for EPA on risk perception issues and have been analyzing risk perceptions, generally, based on survey questions, since the mid-1970s. So I've been doing this for over 20 years. So I do it, first of 13:22:00

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all, by my expertise in the area.

Q. But what do you look at? I mean, what factors do you use to determine whether a question is an effective question or is not an effective question?

A. I look at the wording of the question and see if it's the way of thinking about risk that people can relate to in the particular survey context and I draw on past knowledge of similar questions to see whether these have been effective. 13:22:30

In my case, also I undertook my own survey doing a sensitivity analysis on the questions to see what kinds of results I would get, either with the same question, with a slightly different interview context, or with different wordings of the question.

Q. What -- who prepared the -- well, strike that. 13:23:00

Do you know the name of the person who formulated the questions for their survey and audit that was done in 1985?

A. No.

Q. Have you taken any steps whatsoever to determine the identity of that person?

A. No. 13:23:30

Q. Would you be interested to know the

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qualifications of the person who formulated those questions in the survey?

A. I'd rather rely on my own judgments and my own testing, which is what I did. If I was unable to read the question and unable to do any field test, I would want to know who did it, but I've never had any desire to find out. 13:24:00

Q. Have you received any awards for the work you've done with regard to the risk perception relating to cigarette smoking? 13:24:30

A. Well, it's been published in the number 1 or number 2 Journal and Economics and by Oxford University Press. That's not the same as an award, but in terms of professional accomplishments, that ranks as among the very best places you could possibly publish the work. And you do get a payoff from that professionally. 13:25:00

Q. What were you -- what financial gain did you receive by it being published in these magazines?

A. I don't get anything from articles of journals, although studies have shown linking professors' salaries to articles, that there is a payoff in terms of your salary level by your home institution to being productive. So that's the reason I have a high salary compared to everybody 13:25:30

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else.

Q. How about a link between publishing articles and being hired as a testifying consultant for an industry? Has there been any relation between that?

A. I haven't studied one, but if you spend too much time as a testifying consultant, you can't do articles. So it's hard to do both. 13:26:00

Q. Well, but the only thing that you've done in this litigation is give depositions; isn't that correct, with regard to the Mississippi case and the Florida case and now the Texas case?

A. What do you mean, "the only thing"?

Q. Well, I think you've testified before that the time that you've spent in these cases is preparing -- being prepped for your depo and giving a depo?

A. So it's not been a huge number of hours, but -- 13:26:30

Q. So have you had plenty of time to write other articles and books, given your consultation that you've been doing in these cases?

A. I'm still writing articles and books, yes.

Q. Can you define for me the term "risk perception"? 13:27:00

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A. So as equivalent to the risk belief a person might have about some hazard.

Q. Is risk perception influenced by information?

A. Yes. 13:27:30

Q. Does the quality of the information have an effect on the quality of the risk perception?

A. Well, misleading information can result in a misleading risk perception.

Q. And information can be misleading, correct?

A. Yes.

Q. If an individual, in formulating his or her risk perception, is relying solely on misleading information, then that person's risk perception may also be incorrect or not accurate? 13:28:00

A. That's correct.

Q. In regards to risk perception, would you agree with the saying "garbage in, garbage out"?

A. I've never heard that expression for risk perception. I've heard it for other things.

Q. Would you agree that it can be applied to risk perception?

A. I'm not sure that it would necessarily be garbage out. So if I were to give people overly 13:28:30 alarmist risk beliefs, they would have quite precise

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risk perceptions afterwards that would be too high, but that's not necessarily garbage. Garbage might be thought of as noise, random, where as it might be quite systematically high.

Q. Would you agree that inadequate information could -- could result in too low of a risk perception? 13:29:00

A. Or too high, either way.

Q. Did any lawyer review the preface in "Smoking: Making the Risky Decision" prior to its publication?

A. I don't think so.

Q. As you sit here today, are you telling this court that no attorney looked at the preface in 13:29:30 this book "Smoking: Making the Risky Decision"?

A. Let me see the preface? I don't think they do. I don't think I showed it to Barbara Kaser. If I did, it would only be asking whether I could thank her, but I know I didn't circulate the 13:30:00 whole preface. I don't recall asking her. Whether I did -- I remember telling her I was thanking her, but I don't believe I sought her permission to thank 13:30:30 her.

Q. In your preface, you state, During the course of my research on smoking risks, I was asked

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to share my expertise on risk perceptions and choice under uncertainty with Jones, Day, Reavis & Pogue, which is one of the law firms representing the cigarette industry. 13:31:00

Is the course of the research you're referring to the materials that were given to you by Jones & Day when you were invited to meet with them in Cleveland?

A. I talked to them before I started the book and I talked to them from time to time, not necessarily about the book, but about risk perception issues. So I've been working on smoking issues since I was at Northwestern University, which was 1988 and before. 13:31:30

And this book came out in 1992, so that there may have been some contacts between 1988 and '92 that I had with them, as well as some while I was at Northwestern while I was worrying about smoking issues. 13:32:00

Q. Well, the point that I'm making, it's my understanding that you never looked at risk perception with regard to smoking prior to being contacted by Jones Day; is that correct?

A. I looked at risk perceptions for smoking related to the food cancer warning study, but not

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asking cigarette smokers themselves how risky they thought smoking was. I did a study of rating different hazard warning labels, including the surgeon general's --

Q. Okay.

A. -- before that.

Q. But that had to do with -- with foods that has carcinogens in them, correct?

A. I also had a table including the surgeon general's warnings that served as reference points that they had used as part of the survey.

Q. Okay. But you had -- you had warnings on the surgeon general. You didn't have any risk perceptions, did you?

A. I asked people then to assess risks for different products relative to, let's say, cigarettes, saccharin. So, therein, the survey has referenced risks.

Q. Okay. Well, let me ask you this. Prior to meeting with Jones & Day, had you ever primarily focused on risk perception and how it relates to smoking by itself and not in relation to any other carcinogens?

A. No, except for the work on smokers' job risk perceptions, which was ongoing around the same

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time.

Q. Would it be accurate to say that the majority of your research on smoking -- on risk perception with regard to smoking was done after your meeting with Jones Day? 13:34:00

A. Yes, because that includes -- what, 11 years, something like that?

Q. While writing these studies that you completed about risk perception in relation to smoking, at the time you wrote those studies, did you anticipate being asked to testify by the tobacco industry? 13:34:30 13:35:00

A. No. In fact, I anticipated that I would never testify, so I assumed that the probability that I would testify was zero.

Q. Did you anticipate -- did you anticipate being paid as a consultant by the tobacco industry?

A. No. I did spend one morning reviewing a hazard warning label for Premier Cigarettes, but that was hazard warning work as opposed to risk perceptions. 13:35:30

Q. So it's your testimony as you sit here today that after meeting with the Jones Day lawyers at lunch, after meeting with them in their offices in Cleveland on several occasions, after being given

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-- after receiving articles and materials related to smoking by those lawyers, after receiving an audit and survey that was paid for by Jones Day, after receiving all this information, you thought there was a zero percent chance that you were going to testify as a consultant in tobacco litigation? 13:36:00

A. Yes, because of all this information pertained to the post-warnings era and I was told that that was not a pertinent issue for litigation because they had legal immunity for that time period. 13:36:30

Q. How much would it cost to do the type of study that was done -- I'm talking about the 1985 audit and survey. How much would it cost to do that audit and survey? 13:37:00

A. I don't know. I'm now doing a random digit dialing survey where we bring people to an interview location and that costs roughly $100 a person, $25 of which we give to the people. So -- and that's just done locally. So maybe $50 a hit, depending on what quality interview firm you get. Maybe you can get a lower price. But whatever it is, it's more money than I had. 13:37:30

Q. How -- how many people were surveyed? 3,000, is that correct?

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A. A few thousand people.

Q. A few thousand or 3,000?

A. 2- or 3,000. I forget.

Q. And it's your opinion as someone who has conducted these types of audits and surveys, that it would -- to do that same type of audit and survey that was performed in '85, that would cost about $50 a person? 13:38:00

A. I do possibly more ambitious surveys, so I don't know what it costs to do that one. It depends on how many calls they have to make to get through to the sample population. So I haven't been given a cost estimate for that type. Certainly you wouldn't get it less than $10 a hit, but I really don't know. 13:38:30

Q. So as you sit here today, you can't formulate any kind of opinion, whether it's $10 or $50 or $100 a hit?

A. Well, I did a more ambitious survey for the 50- to $75-a-hit range, so I would assume it would be less.

Q. Why was it more ambitious?

A. Well, for $75 plus the $25 we got people to show up, we got -- we are bringing people now to a central location and we're putting through an interactive computer survey that takes about 35 13:39:00

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minutes.

I've run mall intercepts where they charge us 20 to $25 a hit for adults to be brought into a room, but that's not random digit dialed and that's a more informal survey approach.

Q. Do you have any criticisms of the methods that were used in the 1985 survey and audit?

A. No. 13:39:30

Q. Yet the surveys that you're conducting now, in your opinion, are more ambitious than the ones that were performed in 1985; would that be correct?

A. They're more ambitious in the sense that we have to educate people regarding EPA's water quality criteria for aquatic fishing and swimming, environmental consequences. And these are things 13:40:00 that are not general knowledge, so we have to -- it's a much more difficult survey task than just risk perceptions.

Q. So in your opinion, the surveys that you're performing now that you're saying are more ambitious are over a more complicated subject?

A. That's right.

Q. Is that your opinion?

A. They place more demands on the survey

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responder.

Q. Do you -- do you agree with the statement that questions can be phrased in such a way to generate a particular response? 13:40:30

A. Framings of questions does matter.

Q. And can you frame questions in such a way that you're more likely to get a particular response? 13:41:00

A. It depends on the question. So in other words, if it's a good question, it's a good question, so --

Q. Well, I know it depends on the question. I'm just -- I'm just saying in general, okay? You're saying that you're an expert in doing these audits and surveys. You've been doing it for over 20 years.

My question is, in doing an audit or a survey, is it possible for the auditor or the person conducting the survey to phrase the questions in such a way that a particular response would be generated? 13:41:30

A. If we had that much leeway, then there would be no purpose in ever running surveys, because you can always get whatever answer you wanted, no matter what the underlying truth was. So if it's a good question, generally you don't have that much

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leeway, in terms of the potential response. 13:42:00

Q. Okay. Well, I think you answered my question, but just kind of the back door. I mean, you disagreed and then you turned around and you're answering and you agreed with it.

What my point is, is obviously I understand you think there are good questions and there are bad questions, okay? You've made that point clear, correct?

A. Right.

Q. Okay. My next question is, is if it's a bad question, one of the things that could make a particular survey question a bad question is that it 13:42:30 would -- it would create a situation where the person answering the survey or participating in the survey may be more inclined to give a specific answer; is that correct? Do you agree that that can be done?

A. I don't think you always can influence the answer through the wording, but there may be some effect of the wording on the answers to the question.

Q. But you're dealing with risk perceptions, right? You're dealing in percentages, correct? 13:43:00

A. Well, are you giving me -- is that a

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condition for all possible questions?

Q. Well, what I'm wondering, dealing with risk perception, you're dealing with the likelihood of a particular event occurring?

A. That's correct.

Q. Is that -- am I understanding that -- what you mean by "risk perception" correctly?

A. Or you could be asking about length of life affected by smoking. 13:43:30

Q. Well, my question is, is in gathering this data and formulating conclusions to this data, you're dealing with percentages; is that correct?

A. That was the type of phrasing. How many smokers out of 100 would get these answers.

Q. Right.

You're dealing with percentages, right?

A. Right.

Q. Okay. So my point is, is if you phrase a question a certain way, even -- you answered before that you did not believe that you could phrase a question a certain way in a survey or audit to the point that you could get a specific response from all people. Do you agree? Am I characterizing your testimony correct? 13:44:00

A. I think if you have a good question, that

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you don't have that kind of leeway. I mean, if you can -- I'm not sure what you want to do to the question, but if you include in the preamble to the question the tyrade against the cigarette industry, you might get a different answer. 13:44:30

Q. That's not my question.

Okay. I'm not talking about a good question, all right? I understand -- we have already established -- I don't think I have to go through it again, that you believe that in drafting audits or surveys, that you can ask good questions and you can ask bad questions. You agree with that? 13:45:00

A. Right.

Q. So let's talk about the bad questions, okay? I'm focusing on the bad questions. Do you understand that? Are you with me on that?

A. You're focusing on bad questions.

Q. Okay.

A. I'm with you.

Q. All right. I believe that you've testified earlier that it is your opinion that if someone intentionally tried to draft a bad question to get a specific response, that you could not get a specific response in all the people you survey. You wouldn't -- you wouldn't -- in 100 percent of the 13:45:30

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people you surveyed, you wouldn't get the desired response, if that's what you were trying to do; is that correct? 13:46:00

A. I don't understand. You seldom get the same response from everybody to a survey question.

Q. Would you agree with the point that some people can formulate a survey and an audit to get a specific response that they wanted?

A. You can -- you don't -- you don't always have that much leeway. In other words, if I said, I want to formulate a survey question to get people to say the risk of smoking is zero, I think I'd be hard pressed to do that. I just don't think I could do that. 13:46:30

Q. Okay. All right. You're right -- you're right back on the trail I'm getting on, okay? This is what I'm talking about.

You're saying that you couldn't -- if you wanted -- if you wanted to formulate a question to get the desired response, let's say you had the desired response that people were going to say there's zero percent risk, health risks, to smoking cigarettes, you're saying that you could not do that?

A. I --

Q. You don't think any other auditor or

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surveyer could do it either, correct? 13:47:00

A. I can't imagine how you could do it and still have that as part of the question, unless you're going to jettison the core part of the question, I think you couldn't do it.

Q. Okay. So as far as you know, if you -- if you interviewed 100 people, if you wanted the desired response to be zero percent or you wanted the desired response to be 100 percent, okay, you couldn't get that response from all 100 people. You didn't think anybody could, correct? 13:47:30

A. I think zero and 100 from everybody would be hard.

Q. Okay. However, would you agree with me that you can formulate a question to the point where it will be more likely for a group to say zero percent or close to zero percent rather than for them to answer the question 100 percent or closer to 100 percent? 13:48:00

A. I already gave you an example of that. If you include a preamble attacking the cigarette industry, you'll get numbers that are systematically too high.

Q. Okay. Or how about a preamble supporting the tobacco industry?

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A. Then that could have the opposite effect.
Q. How about phrasing things in hypotheticals rather than directly to the person being surveyed?
A. I'm not sure what you mean. These questions are not hypotheticals. They're asking people with respect to reference population. 13:48:30
Q. Okay. How about directing the question to the person being surveyed personally, directing the question to them rather than directing the question to an anonymous group?
A. I found this way of asking the question does elicit reliable risk responses. A reference population is a common and generally used technique to ask about probabilities. It's a lot easier than teaching people probability theory with pie charts. 13:49:00
Q. But you're not trying to teach the -- with your question, you're not trying to teach the people being surveyed. You're just trying to get their opinions as to specific questions, correct?
A. I don't have to teach them, because thinking in terms of proportions out of 100 is something people naturally can do. Where as if you have to teach them probability theory, that's something that you have to run like a mini course as part of your survey and generally it's been less 13:49:30

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successful as an approach than these reference population approaches.

Q. How about -- how about using the terms by percentage, rather than saying 30 percent or 40 percent or 50 percent, as to one individual? 13:50:00

A. Percentage is another thing, percentage versus out of 100. Lots of times people answered the questions in terms of percent. So if you look at the actual phone interview transcripts, they would say 30 percent.

Q. Okay.

A. Sometimes it came out.

Q. How about -- couldn't you ask the question what percentage do you think you would have -- what percentage of a chance do you think you have if you smoke cigarettes for 40 years of developing lung cancer yourself? 13:50:30

I mean, people are very familiar with 10 percent, 20 percent, 30 percent, 50 percent. You even have testified that people use those terms in answering the questions you formulate or the questions that the Jones Day survey formulated. 13:51:00

A. All the studies we've done for EPA have always used reference populations, so we found that that's something people can relate to and answer

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with respect to. So we always note the denominator is 100.

Some people may intuit the percentages. Some people may not. At least here we're telling them exactly what you would have told them to the percentage, if they understood the percentage, but not everybody in the survey sampling group is as educated as you are, so that's why we tell people it's out of a population of 100. 13:51:30

Q. In your preface, you say -- the preface of "Smoking: Making the Risky Decision," you state, The extensive research that I undertook for this book has not been supported either by the cigarette industry or by any law firms representing them. 13:52:00

Do you believe that's a true statement?

A. Yes, I do.

Q. Isn't it correct that some of the information you're using in the book Jones Day actually paid for by compensating you for your time in performing some of these surveys or studies?

A. They didn't pay me to run any of the surveys. The surveys that I ran, Jones Day had no knowledge that I was running the survey. They had no knowledge of the results and they had no contact with me during that time period whatsoever. So the 13:52:30

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first they knew of it was when they showed up in my book.

Q. But didn't they pay you to review the survey, the 1985 survey, that they, in fact, had performed?

A. That's -- their survey, I read the survey. I was paid for that.

Q. Okay.

A. But I undertook my own survey.

Q. Okay. Well, I'm talking about -- I'm talking about that is part of this book. In fact, 13:53:00
that's one of the cornerstones of this book, is that 1985 survey that Jones & Day paid to have done and it was done by some outside firm; isn't that correct? Isn't that one of the cornerstones of this book?

A. It's one of the main sources of data that I used.

Q. And isn't it true that Jones & Day paid you for your time for reviewing that survey?

A. Not for the analysis of the survey that goes into the book, but the one hour I spent in 13:53:30
their office reviewing the survey and the summary tabulation, yes, that would be billed.

Q. Did you review -- didn't Jones Day -- did

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you use any of the information from the articles that they gave you to review?

A. I don't recall doing that, but it's part of my general knowledge. I mean, I don't recall drawing specifically on the articles I read.

Q. Once they gave you the results of the survey, did they pay you for reviewing those? 13:54:00

A. Yes. I did get paid for analyzing the results of the survey, but that's different than getting paid to do statistical analyses that were part of the book.

Q. How about the background information that you requested they give you from the survey? 13:54:30

A. What background information?

Q. Well, it is my understanding there were two separate times when they gave you information concerning this 1985 survey. They gave you, I think, the survey itself in the second meeting with them in Cleveland when they gave you all of those materials.

A. I don't know.

Q. Isn't that correct?

A. I don't know which meeting this was, whether it was the second, first, third. 13:55:00

Q. Well, whichever meeting, it doesn't

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matter, okay?

A. Correct.

Q. I'll take that out of my question if you have a problem with that.

A. All right.

Q. My point is this. At some time early on in your meetings with Jones Day, they gave you a bunch of materials. You've already testified to that, correct?

A. I looked at the materials. They mailed me some.

Q. Okay. You looked at some. Some of it you asked for photocopies. You said that?

A. That's correct.

Q. Okay. And I'm sure you took the photocopies back to wherever you were living at the time -- 13:55:30

A. They mailed --

Q. -- or working at the time?

A. They mailed them to me.

Q. And you -- and they mailed you other information, right?

A. They mailed me photocopies of what I asked for.

Q. Okay. And I just want to be real clear.

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Did you take any information from the office from Jones Day in your hands physically, when they gave -- the first time they gave you any information, back to your office or wherever you went?

A. I don't believe I did.

Q. Okay. So you're saying you walked out of there empty handed and they mailed everything to you? 13:56:00

A. That's my impression.

Q. Okay. And you say -- and I think you testified earlier that there were numerous articles that they provided, too, correct?

A. That's correct.

Q. And -- when they mailed this to you, did it come in a box or an envelope or how did they come?

A. I don't know. Envelope or box.

Q. In the materials that were mailed to you, you testified earlier that you reviewed a document 13:56:30 concerning the 1985 audit and survey, correct?

A. Yes. So I reviewed the survey text itself.

Q. Right.

A. But I'm not sure if at that time I reviewed the mean responses or whether it was later. It might have been then.

Q. Okay. Well, let's get -- okay. You're

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saying now that you don't know whether the mean responses were reviewed at that time or they were reviewed later; is that what you're saying? 13:57:00

A. I'm really not sure.

Q. Okay.

A. It could have been then.

Q. Okay. Well, did -- just so we're clear for the record, did Jones Day pay you for reviewing the materials that they sent you?

A. Yes.

Q. And part of the materials they sent you was the text and the survey, right?

A. Yes.

Q. It is my understanding that in previous depositions and earlier today, you have stated that 13:57:30 the first time you saw this survey was when they mailed it to you, right? The first time you saw this survey, the text of the survey, is when Jones Day gave it to you, correct?

A. I'm not sure if that was in their office or not, but I knew the survey existed in their office. I believe I saw the survey in their office.

Q. Okay. You saw it in their office and then you later got a copy of it?

A. Right. 13:58:00

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Q. Okay. And this is the first time, whether it was in that -- whether you saw it at the office or whether you read it further when they mailed it to you, that was the first time that you had seen the survey, correct?

A. I never saw it before I visited Jones Day, if that's what you're asking.

Q. Right.

And as far as you know, the survey never existed?

A. That's correct.

Q. It's my understanding that after reading this survey, you requested Jones Day to provide you the backup information, right? 13:58:30

A. I requested the raw data at some point.

Q. Okay. The raw data. Let's use your term, "raw data."

I believe you have further testified that it took at least six months, and maybe up to a year, to even receive the raw data from Jones Day, correct?

A. It took a long time, yes.

Q. So just to be clear, the raw data was not included in the text. You didn't get the raw data 13:59:00 at the same time that you got the text of the

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survey, did you?

A. I may have had a report on the survey, a summary of what audits and surveys included with a sample means for the different questions, but I did not get the raw data.

Q. Okay. Did Jones Day pay you to review the raw data?

A. Only insofar as I verified the audits and -- I wanted to look at the raw data and verify the audits and survey analysis of it to see whether, in fact, they got it right. 13:59:30

Q. Okay. What did you do -- how long did it take you to do these calculations?

A. I don't remember.

Q. Okay. How long would you guess, I mean, would it take to do these calculations? I mean, how -- how complicated or how long does it take to do the calculations or check the raw data to make should sure it's accurate?

A. It would be days, not hours. So you would have to get the data tape up. I would have to 14:00:00 figure out how it was coded, determine how missing values were coded. I end up disagreeing with audits and surveys. On some of the things, we'd have to find out, because that -- because of how they

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classified the variables.

Q. Did you disagree with any of the raw data in this survey after doing your calculations?

A. I actually did not go back to the report audits and surveys did on the data. I -- any information I wanted, I just generated myself. 14:00:30

So in other words, if I wanted to know what were the average risk perceptions for mortality, I kicked out those numbers myself rather than looking them up. So I glanced at their analysis and read it over, but I did not sit there and do my output compared with their output.

Q. Okay. Well, you lost me now on that one. I mean, I thought you just said that you wanted to get the raw data to ensure that -- you know, to see 14:01:00 what the, you know, report was based on, what the survey was based on. You wanted the backup information or the raw data that they used do write the text, correct?

A. My last answer referred to the 1997 audits and survey data, not the one in the 1980s.

Q. Okay. Well, I never went to the one in the 1990s. I mean, why did you make that jump?

A. Because that's what I thought your --

MR. ATKESON: Because you said "this

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survey." You didn't say the 1985. 14:01:30

MR. FISHER: Oh, okay. Well, let's just make this agreement. I'm going to talk about the 1985 survey until I go on to a different one.

MR. ATKESON: Okay.

MR. FISHER: I mean, I never wanted to --

MR. ATKESON: I was going to ask you to clarify because I thought you were asking about the 1997 survey as well.

MR. FISHER: Okay. Well, I guess I've been talking about the 1997 survey the whole time, right?

THE WITNESS: No, just that one question.

MR. ATKESON: No. No. No. No. No. When you said "this survey" --

MR. FISHER: Okay.

MR. ATKESON: -- I thought you were changing as well. That's all.

MR. FISHER: Well, I'm sorry I wasn't clear. 14:02:00

Q. (BY MR. FISHER) The 1985 survey that we've been talking about the last 15 minutes or 20 minutes, the question that I have is, isn't it true that you wanted the raw data for that survey?

A. Yes.

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Q. And when you got the raw data for that survey, you got it from Jones Day, correct?

A. Yes.

Q. Did Jones Day pay you for reviewing this raw data?

A. Yes.

Q. How long did it take you to review this raw data to ensure that it was correct?

A. I don't know. It was days of analysis, because we had to get the data going and worry about 14:02:30
the coding and then run all the various statistics.

Q. Was the raw data that you had requested for six months or maybe a year or for some period at time, was it important in writing this book, "Smoking: Making the Risky Decision"?

A. Yes, it was.

Q. Could you have written this book without that raw data? 14:03:00

A. I could have. It would have either been a thinner book or I would have had to run more of the surveys myself using just a local sample, which is what I did. So I used a North Carolina sample that I could do for free. I could have done that for the whole book, but it wouldn't have been a national sample.

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Q. And it was important to you to use a national sample in writing this book, right?

A. Well, better. I could have published it with North Carolina.

Q. So would you consider the analysis performed on the raw data for the 1985 audit and survey, would you consider that research? 14:03:30

A. No. I just considered it checking the data for them. The research, the actual research, in terms of the analysis, involved different kinds of manipulations. 14:04:00

Q. Okay. Well, would you consider it an analysis, the work you did on the raw data?

A. I analyzed the data to assess whether what they said about the means was correct, yes.

MR. ATKESON: Counsel, I don't know if this is helpful. I can do this off the record, but there appears to be a miscommunication going on between you and the witness. 14:04:30

MR. FISHER: Yeah, let's go off the record. What are you saying?

THE VIDEOGRAPHER: We're off the record.

(Discussion off the record.)

THE VIDEOGRAPHER: We're back on the record. 14:05:00

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Q. (BY MR. FISHER) Isn't it true that the -- that the research that you did on your own volition, okay, that you performed yourself, was done to check the results of the 1985 audit and survey?

A. I did that both to check the results as well as to expand the domain of the risk perception analysis.

Q. Okay. But again, the -- you based the questions that you asked, you -- in formulating those questions, you looked at the questions that were done in the 1985 survey and audit; is that correct?

A. Well, I already looked at them.

Q. Okay.

A. And I did variations on those questions, some of which were quite different. Then people over the phone start answering in percentages. So I focused on these questions as being the most natural way for people to think about it.

Q. Okay. So it would be a fair statement to say that you relied on the questions that were formulated in the 1985 audit and survey in preparing your independent evaluation; is that correct?

A. Well, part of the purpose of my study was to test the robustness of those questions with

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respect to different wordings. So naturally looking at those questions would be part of that exercise. 14:07:00

Q. Well, and that's what you used. You used the 1985 audit and survey as a measuring stick, correct?

A. I used that and then I altered the wording to see how the results would change.

Q. And again, how they would change in relation to the 1985 audit and survey, correct?

A. Right, to see how accurate those results were and to see how they changed under different question wordings. 14:07:30

Q. And your review of the 1985 audit and survey, the text itself, the time you took to review that was paid for by Jones Day; is that correct?

A. Yes, it was.

Q. The analysis that you performed on the raw data that was given to you six months to a year after you had reviewed the text was paid for by Jones Day, correct? 14:08:00

A. The part that I would call a consistency check of the earlier results, plus different cuts on the data to see if it was really an accurate characterization of the results, yes, but that's different than all of the detail statistical work in

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this book.

Q. Okay. And that's fine. I'm not saying that Jones Day paid for all the work that you did in this survey. I'm not saying that.

My point is, is that Jones Day, at least for the initial review of the text, for checking the raw data, for analyzing the raw data to make sure that it was accurate, was paid for by Jones Day, right? 14:08:30

A. Yes, it was.

Q. And that was the initial steps that helped launch your independent survey yourself, correct?

A. Well, I wanted to go through that before I used the audits and survey results for my research.

Q. And you used a 1985 survey and audit as to -- to not -- maybe not guide you, but to educate you as to the formulation of questions for your own survey, correct? 14:09:00

A. I didn't use it to teach me anything. I used it to test the robustness of the survey results to reasonable variations of the question wording.

Q. And your initial work with the 1985 audit and survey is contained in this book, correct? 14:09:30

A. No.

Q. Oh, it isn't contained in this book? You

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don't talk about the 1985 audit and survey in this book?

A. My subsequent work with the audits and survey data is in the book, but the initial work was mostly just checking the original audits and survey report and doing some simple cuts on the data. These involve more extensive statistical analyses of the data that were undertaken after I stopped doing any work for Jones Day. 14:10:00

Q. I'm going to read you a part of your preface, paragraph of your preface. It says, During the course of my research on smoking risks, I was asked to share my expertise on risk perceptions and choice under uncertainty with Jones, Day, Reavis & Pogue, which is one of the law firms representing the cigarette industry. This effort never involved participation in any legal regulatory proceeding. 14:10:30 14:11:00

In the course of my discussions with them, I learned of a national survey that had been undertaken on their behalf to assess consumer attitudes and risk perceptions with respect to smoking.

The survey design was quite sound and the data represented a rich source of information for examining a variety of aspects of smoking behavior. 14:11:30

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These data, which I will refer to below as audits and survey data, will be a primary focal point of the empirical analysis in this book.

Would you agree with your own statement in the preface, that the audits and survey data, which was completed in 1985, is a primary focal point of this book?

A. Sure.

Q. Will you define the term for me "cognitive dissonance"? 14:12:00

A. Denial of a risk, trying to put it out of your mind. 14:12:30

Q. Have you ever done any research on cognitive dissonance?

A. Not by that name, but I've looked at whether risks affect behavior and precautions, which would be a reflection of whether people actually did put it out of their mind.

I may have suggested at one point that if it's so easy to put risk out of your mind, we wouldn't have a flourishing sleeping pill industry, but I don't think I've written extensively on cognitive dissonance. 14:13:00

Q. Well, have you ever -- have you ever relied on any survey or study on cognitive

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dissonance written by someone else in formulating any of your opinions with regard to risk perception with smoking?

A. I'm sure I've worked with psychologists in the design of all -- or most of my surveys. So that may have come up as a factor, but I can't name any specific cognitive dissonance survey I've tried to emulate. 14:13:30

Q. Have you ever published any articles on the topic of cognitive dissonance?

A. I don't believe so.

Q. What is risk analysis?

A. Well, it means many things to different people.

Q. What does it mean to you?

A. It could be analyzing the magnitude of the risk, society's responses to risk. It includes -- it could include risk assessment, assessment of government regulations pertaining to risks. 14:14:00

Q. Is it true that in forming your opinions with regard to risk analysis, you have always taken the surgeon general's risk assessment as the reference point with regard to smoking?

A. I have never questioned the surgeon general's estimates and have always used those in

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the case of environmental tobacco smoke. Although I have expressed reservations regarding EPA and OSHA estimates, I've always taken them at face value as well. So I've never tinkered with those estimates of the risk.

Q. Are those the only organizations whose statistics you've used in your own -- in formulating your own risk analysis?

A. For smoking?

Q. Yeah, for smoking.

A. I believe maybe American Cancer Institute or somehow -- other body I may have used in addition to the surgeon general.

Q. How does the -- what is the -- have you ever reviewed risk assessment generated by the tobacco industry?

A. No.

Q. To your knowledge, has the tobacco industry ever produced a risk assessment study?

A. They've done it for the Premier cigarette or its analogue, but I don't recall a risk assessment study for conventional cigarettes.

Q. Have you ever asked the tobacco industry to -- if you could review any risk assessment studies they may have done on cigarettes?

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A. No.

Q. Why not?

A. I assumed that the best evidence was statistical studies linking smoking to fatality rates and these have been done at the national level and they're reported in the surgeon general's reports.

Q. In your opinion, are those sources the most reliable sources that are available for anyone to rely on with regard to risk assessment?

A. For the risk to the individual smoker, as opposed to some of the other things that might be in the report, I believe they are the most reliable sources I know of out there. 14:16:30

Q. Would you criticize any other expert in another field to rely on surgeon general statistics or the American Cancer Society statistics? 14:17:00

A. It depends on what the statistics are. So if the statistics don't pertain to health risks, but they're venturing into other fields, like hazard warnings, then these are areas where they don't necessarily have expertise. They're physicians.

Q. And that's a fair answer to my question. My question wasn't very clear. I asked a bad question. 14:17:30

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Is -- with regard to smoking issues, if other scientists or experts relied on surgeon general statistics or American Cancer Society statistics or EPA statistics or OSHA statistics, would you be critical of their reliance of these statistics? 14:18:00

A. No. I mean, if you rely on some statistics, you should couple them with caveats. So I have caveats in the environmental tobacco smoke statistics. But they are not risk analysts in the sense of trying to determine the objective scientific risks, but are trying to run with that data for some other purpose. I can't imagine being critical. 14:18:30

Q. In your opinion, what is the role of the surgeon general in this country?

A. I think the role should be to alert people to public health risks, to provide risk information that will enable people to make sounder health decisions. So that would involve providing information that people don't already know, for example. 14:19:00

But I think his objective or her objective should be to enable people to make informed choices with respect to their health.

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Q. In your opinion, would -- does the tobacco industry have the same obligation with regard to their tobacco products?

A. I'm not sure the extent to which they have the legal freedom to make health-related claims with respect to cigarettes and almost anything you say related to health that is not adverse becomes a health claim. 14:19:30

In fact, they weren't even allowed to say much about the Premier cigarette, which didn't involve the burning of tobacco. So I think that they're very constrained in terms of what they can do. Whereas a public figure, such as the surgeon general, doesn't have those constraints.

Q. Are you aware of the tobacco industry, other than, I guess, the Premier cigarette, on conventional cigarettes, ever lobbying the FDA or the surgeon general or any other regulatory branch of the government to release information concerning health risks and smoking? 14:20:00

A. We also had the period known as The Great Tar Derby, where cigarette companies competed in terms of the relative safety of cigarettes based on their tar content and the government shut down this competition. It was only when the American Cancer 14:20:30

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Society protested that the government eventually relented.

So they have had a history of trying to foster some information to dissemination. But even at a fairly innocuous level, it should be embraced by the government, but they've often been attacked.

Q. Sir, my question is, are you aware of any time when the tobacco industry has petitioned any branch of the government to allow them to divulge health information regarding conventional cigarettes? 14:21:00

A. That was The Great Tar Derby I just talked about.

Q. They petitioned the government to be able to put the tar amounts on their packages of cigarettes?

A. They started doing it. The government said, No. I'm sure that they lobbied to get permission to continue doing it. Theirs is a major battle. 14:21:30

Q. Okay. Other than the tar derby, have they ever at any other time -- I mean, they've been manufacturing cigarettes for years and years. At any other time in the history have they ever gone to the United States government and petitioned the government for their permission to divulge health

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consequences related to conventional cigarettes?

A. I don't know what all the things they've done are. 14:22:00

Q. Have you ever asked them that question?

A. No, I've never had a contact with a cigarette industry official, except the lawyer involved in the Premier cigarette warning label.

Q. Do you know what the percentage of people -- what percentage of people in America smoked in the 1950s?

A. It was higher. It may be in my book. I don't remember it offhand. 14:22:30

Q. Okay. Do you know what percentage of people in America smoked in the 1960s? Was it more or less? I'm sorry to interrupt you. You were about to answer me. Was it more or less than the '50s?

A. I don't recall the exact number.

Q. Okay. At what period or what time period did the percentage of people who smokes in America start to decline? 14:23:00

A. I know I have charts in various publications giving per capita consumption of cigarettes. Do you want me to look it up?

Q. No. That's okay. 14:23:30

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A. It's in there.

Q. What year did the surgeon general come out with the label habituation related to smoking? 14:24:00

A. I don't memorize the dates, but they're all in my book.

Q. Okay. So as you sit here today, you don't remember at what time period they came out with that label?

A. I forget the exact year for all the labels, except '64.

Q. As well, do you know the -- what year the surgeon general changed the label related to smoking 14:24:30 from habituation to addiction?

A. I forget the exact year of that, too, but I do discuss that in my book, as well as the label.

Q. In your opinion, is nicotine an addictive drug?

A. That calls for medical judgment, so I don't make medical judgments. I do know that cigarettes with nicotine make it harder to quit smoking. 14:25:00

Q. Do you agree with the surgeon general when they changed the label that stated -- when they changed the label relating to smoking from habituation to addiction?

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A. I don't agree or disagree. I think it's rather odd that they changed the label and it may be a political decision. It could be a medical decision. I'm not sure what went through their heads. But from an economic standpoint, all that matters is quitting smoking is not costless. 14:25:30

Q. With all the information that is out there regarding nicotine and addiction, would you say that predominantly most of the information that's out there states that nicotine is addictive or is not addictive?

A. Well, we know the consensus -- which I don't disagree with, is that quitting smoking is hard. If you call changing any activity as being difficult "addictive," then certainly you'd call that addictive. Giving up Pepsi may be addictive, but I think it may involve more than that and I'm relying on medical people to worry about those nuances rather than me. 14:26:00

Q. Would you say that the consensus of the literature out there is that nicotine is addictive?

A. Well, the consensus used to be habituation and I'm not exactly sure what made the consensus shift. To what extent is it new medical evidence or to what evidence is a changing mood regarding the 14:26:30

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tobacco industry.

Q. My question is, is there more literature out there -- is the consensus of the literature out there that nicotine is addictive or is not addictive? 14:27:00

A. First, the literature is not independent of what the surgeon general does, in terms of the label. And second, I haven't read all the medical literature. I don't know.

Q. In your opinion, when the tobacco executives stood before congress and stated under oath that nicotine is not addictive, were they correct? 14:27:30

A. It depends on the extent to which they got into the nuances of addiction, habituation, and whether quitting smoking is hard to do.

Q. In your opinion, does the tobacco industry have a duty to know the effects of nicotine, which is contained in their cigarette products? 14:28:00

A. All opinions regarding duties are legal judgments that I don't make.

Q. Well, have you ever made legal judgments before? We just went through about 50 articles where you talk about writing for the -- writing for the entity that was responsible for publishing the

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restatement of torts. Have you ever given a legal opinion?

14:28:30

A. I try to confine myself to economic analysis of legal issues as opposed to being a surrogate judge.

Q. Are you a professor at the Harvard Law School?

A. Yes.

Q. What is the role of the Harvard Law School?

A. We train lawyers.

Q. And in training lawyers -- do you have to give legal opinions in training lawyers?

A. I don't. No, judges do that. So we may go over court cases, but I don't give legal opinions.

14:29:00

Q. Do you give -- do you give opinions as to case precedent, establishing law in a certain state or a certain area?

A. Other professors do. I don't. So I discuss the economic analysis as it pertains to the cases.

Q. So as you sit here today, you're saying that you have never given a legal opinion?

A. Well, I'm not a lawyer and I'm not a

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judge. So I am -- I am an economist. So to the extent that I comment on anything, it's only from the extent -- standpoint of an economic judgment. 14:29:30

Q. In your opinion, does the tobacco industry have a moral obligation to inform the public as to what is contained in their cigarettes?

A. I don't make any judgments regarding morality, either. Ministers, priests, and the like would do that. 14:30:00

Q. In your opinion, would it be economically beneficial for the tobacco industry to inform the public as to the addictive nature of nicotine?

A. I don't think that it's a state secret that quitting smoking is hard to do. I'm not sure what the cigarette companies could add to that information, but I believe if it's important to do that, the surgeon general and congress will add that to the required list of warnings and I believe it's part of the proposed package. 14:30:30

Q. Well, how about the tobacco industry, can't they disseminate this information?

A. Well, risk information that you'd want to provide to make people have accurate risk perceptions cuts both ways. So if people have an exaggerated perception of the risk and we were 14:31:00

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really asking the tobacco industry to correct misperceptions, then they should go out with information to decrease the public's risk perceptions in situations where they overestimate the risk.

They're not allowed to do that, so I think, really, they're shut out of this game, largely by the fact that the government has taken over the warning function. 14:31:30

Q. Well, isn't it true that if you decrease -- I mean, I understand that your opinion is that the general public has an increased valuation of the risk in relation to the actual risk involved in smoking cigarettes?

A. They --

Q. That's basically your opinion, right?

A. They overassess the risk, yes.

Q. They overassess it.

In your opinion, if people were overassessing the risk, is there a better chance of 14:32:00 that risk occurring?

A. If they -- the risk is independent of how people think about it, unless it affects their decision to engage in the activity. So if you overassess the risk and you pay attention to your

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risk perceptions, you'll be less likely to engage in the activity.

Q. Okay. And your answer -- I understand. If -- if it was medically shown -- okay. I'm going to ask you to assume this as a hypothetical, okay?

If it was medically shown that 100 percent of the people who smoked cigarettes die of lung cancer before the age 50 and that information was passed on to the public, in your opinion, would it be less likely for people to start smoking?

A. Yes.

Q. If -- assuming another hypothetical, if information was disseminated to the public that 75 percent of the people who smoke cigarettes will die of lung cancer before age 50, would more people start smoking than if the information was 100 percent?

A. Probably, yes.

Q. If the information was that it was 40 percent, you had a 40 percent chance to die of lung cancer before the age 50 if you smoke cigarettes, would more people start smoking than if the percentage was 75 percent, in your opinion?

A. The more people assess the risk as being

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lower, the more people will smoke.

Q. All right. Is people -- is the fact that people -- a person quits smoking a good thing?

A. Not necessarily.

Q. Well, let me ask you this. Is it beneficial for one's health to quit smoking?

A. Yes, but it's beneficial for one's health not to get on an airplane and not to drive in a car. So it would depend on the benefits to the individuals smoking and their perceived health costs. 14:35:00

Q. Isn't it -- well, let me ask you this. Do you -- do you believe -- is it your opinion that smoking cigarettes is the same as driving a car?

A. No, but each of them involves a risk and a benefit and we want people to understand the risks and the benefits and make sound decisions. 14:35:30

Q. Would fewer people die of cancer if fewer people smoked in this country? 14:36:00

A. I believe so, assuming they didn't do something else risky.

Q. To take its place?

A. Right.

Q. So as far as public perception goes, I believe your testimony is, is that the more -- the 14:36:30

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higher chance people perceive of getting some disease caused by smoking, the more people that will quit smoking cigarettes, correct?

A. Or the more people won't stop -- start altogether.

Q. Or won't start.

Do you support the regulations that prohibit smoking in elevators? 14:37:00

A. I haven't done an analysis of those, so I'd want to, you know, study it and see to what extent that's a problem or is it already covered by existing smoking restrictions.

Q. Do you support the regulation prohibiting smoking on airplanes? 14:37:30

A. I haven't done an analysis, but I think to the extent that you have a shared air system in the plane and the majority of the passengers do not smoke, probably do not like cigarettes, that is probably a beneficial thing from a benefit cost standpoint -- 14:38:00

Q. Wouldn't --

A. -- but I haven't done the study.

Q. Okay. Wouldn't the same be true for an elevator?

A. It depends on who's taking the elevator.

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If it's people who smoke, you know, so that it's a clientele that smokes -- people who fly airplanes are a particular demographic mix that have a lower-than-average smoking percentage.

Q. So are the only people that take elevators smokers?

A. No, but it depends on the context. Where is the elevator, what's the air system like, in terms of ventilation, how long are you on the elevator. These are things that the business or the particular organization usually can regulate itself. 14:38:30

Q. Do you support the -- wait. Wait. Wait. Your last comment was the business or the particular organization can regulate itself. Are you talking about the people that own the premises that has the elevator in it or are you talking about the tobacco industry can regulate themselves? Who are you saying "they"? 14:39:00

A. Like Duke University or Harvard University can set their own standards for whether you can smoke in elevators.

Q. Okay. So in your opinion -- your opinion, the -- it should be regulated by the premise owner rather than the U.S. government?

A. Unless you can point to a reason why the

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premise owner will not do the correct thing.

Q. Do you support legislations which prohibits the sale of tobacco products to minors? 14:39:30

A. Yes.

Q. If you were presented information that showed that tobacco companies intentionally targeted 14:40:00 minors to get them to start smoking, would you support that?

A. I wouldn't support targeting minors in marketing efforts.

Q. You testified earlier that you have two children, one 14, one 16. Would you be upset with 14:40:30 the tobacco industry if you found out that they had purposefully targeted your children in advertising campaigns to start smoking cigarettes?

A. I'm not sure their advertising campaigns are anything my children pay attention to.

Q. Well, let me say -- let me say that -- let's -- assume with me that it's proven that the 14:41:00 tobacco companies did target minors in advertising. Having a 14- and 16-year-old son and daughter, would that upset you to find this fact out?

A. Only if I thought that their targeting had an effect on their smoking behavior.

Q. If their marketing literature did have an 14:41:30

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effect on their smoking behavior, would you be upset with the tobacco industry?

A. I'm not exactly sure how to answer that, but it's not something that I would be pleased with. I'm not sure what it means for me to be upset and what that means that I would do, but that would be a negative thing rather than a positive thing for me.

Q. If you talked to your son and found out that he was smoking cigarettes at school and he told you that he smoked cigarettes because he thinks it's a cool thing to do based on the advertising that's out there, would that bother you?

A. First of all, I don't think that would ever happen. But if he did do that, I would talk to him about what I perceive the risks of smoking to be.

Q. If you found out that your son or daughter was smoking, would you continue to testify on behalf of tobacco industry?

A. I don't know. What age?

Q. They're 14 and 16, right?

A. It depends on whether I thought the tobacco industry had anything to do with it.

Q. Well, if you later saw documentation that

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the tobacco industry was targeting kids in their advertising, you see a memo and it says, We need to get kids to smoke at an early age so that they will be lifelong smokers, and you later found out that your son or daughter was smoking at the age of 14 and 16, would you continue to testify on behalf of the tobacco industry?

A. I would want to make my own judgment as to whether their activities had anything to do with it, because their product is something that if -- once they're 18, would be something that they would be permitted to do. In other words, they would be adults at that point. 14:44:30

Q. Would it upset you if you found out that your son or daughter started smoking at the age of 21? 14:45:00

A. I would discuss with them what the implications were and make sure that they understood what they were. These are not the choices I would make.

MR. FISHER: He needs to change tapes. Let's take a break. 14:45:30

THE VIDEOGRAPHER: We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the

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record.

Q. (BY MR. FISHER) If you determined or found out that one of your children was smoking, would -- would you decide to tell them that they had a lesser chance of getting sick because of smoking cigarettes than the public perception?

A. I wouldn't talk about the public perception. I would just talk about what the risks were.

Q. So when it's your children, public perception doesn't really matter, does it, when you're dealing with yourself or your children, correct?

A. Well, I would go out and tell them what I perceived to be the best estimates of the risk. So I'm allowed to do that.

Q. Right.

But if you thought that that would increase their chance of continuing to smoke, saying, Oh, that's great news, that everybody thinks that smoking is more dangerous than the medical evidence suggests, so, you know, it's okay if I smoke?

A. They don't read the medical evidence, so I'm just giving them what I think are the best

14:46:00
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estimates.

Q. Well, if you thought that that would increase their risk of continuing to smoke, would you tell them that information?

A. My belief is just generally to tell them the truth and hope that it plays out well.

Q. Have you ever smoked personally? 14:49:30

A. Which -- cigarettes, pipes, cigars?

Q. That's a good -- that's a good point. Have you ever smoked cigarettes?

A. I tried to smoke one cigarette, but did not inhale.

Q. Okay.

A. I have smoked a pipe.

Q. Other than maybe sneaking behind the garage when you were a kid or smoking at a party or whatever, one cigarette, I mean, have you ever -- 14:50:00 have you ever smoked, let's say, two days in a row?

A. I've never smoked a cigarette.

Q. Okay.

A. I've literally never inhaled a cigarette.

Q. Has your wife ever smoked -- has your ex-wife ever smoked cigarettes?

A. She was a smoker.

Q. How long did she smoke?

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A. I don't know. 10 years, maybe. I don't know.

Q. You-all got divorced in 1994, correct?

A. Somewhere in there. 14:50:30

Q. Or separated in '94, divorced in '96, something like that?

A. Right.

Q. Did you tell her the public perception of smoking was higher than the actual risk?

A. She was a nonsmoker at that time, a vegetarian, macrobiotic diet, and all that, so I don't think I had to go into it. So she had -- she had changed her orientation by that time.

Q. Okay. Well, when did -- when did she quit 14:51:00 smoking? What year did she quit smoking?

A. I would say about 17 years ago, somewhere around there.

Q. So she was still smoking at the time you were doing the studies that were written in your book, correct?

A. No, because the studies were done 10 years ago or so and -- or less and she stopped 17 years ago.

Q. Oh, 17. Okay. Okay. My math was wrong.

In your opinion, has the tobacco industry 14:51:30

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been truthful with American public with regard to the health risks of cigarette smoking?

A. Well, they've printed all the surgeon general's warnings and the legally mandated warnings. So certainly for the last 33 years, they've disseminated the information that congress has wished them to. 14:52:00

Q. Right.

And you just made the point at the last of your sentence. They didn't do these surgeon general warnings on their own volition, did they?

A. No.

Q. They were required by law to do that, correct? 14:52:30

A. That's correct.

Q. If they wanted to advertise their product, correct?

A. That's correct.

Q. Do you think prior to putting the warning labels on their advertising and their cigarette packages, do you think that the tobacco industry had been truthful with American public?

A. They tried various kinds of information dissemination, such as the tar information dissemination.

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Q. Well, when was the tar dissemination done?

A. I can look it up. It's in my index under The Great Tar Derby. 14:53:00

Q. Was it before or after the surgeon general warnings?

A. I don't know whether it was the late '60s or '50s, but it's not recent.

Q. Okay. So you don't really know if it was in the '50s or the '60s, the tar debate?

A. I don't remember. It's been a while since I wrote this book.

Q. Okay. Other than -- did they ever warn people of the danger of tar? 14:53:30

A. I think tar was viewed as a negative attribute. Lower tar and nicotine became a theme that they could achieve.

Q. Did they ever tell anybody the health consequences of cigarettes that had increased tar or more tar than other cigarettes?

A. There was lots of subtle advertising, such as, These cigarettes are less harmful to your throat zone or less likely to get your wind. So that's 14:54:00 true in the '50s, when they did ads like that.

Q. Did they ever -- did they ever tell anybody that lower tar meant less chance of getting

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cancer?

A. That's the trouble. They're not -- I don't think they're allowed to make health claims.

Q. So in your opinion, the tobacco companies were prevented by the government in distributing information about the health risks of cigarettes?

A. They -- 14:54:30

Q. That's your opinion?

A. That they could not distribute comparative health risk information because that would be a health claim.

Q. Okay. How about health -- how about health information that's not comparative?

A. Well, if they went out and distributed information that was in line with the true risks, people might argue that it undercut the surgeon general's warnings. So I think they are very constrained by the fact that we have a government-mandated warning structure in place out 14:55:00 there.

Q. Are you aware of any attempt by the tobacco industry to petition the United States government or any branch of the government about the health risks regarding smoking?

A. Just the examples I gave earlier with

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respect to the Premier cigarette and the tar derby. 14:55:30

Q. Okay. Other than the tar derby, are you aware of them -- if you found out your children were smoking, would you tell them to quit?

A. Yes.

MR. FISHER: I have no further questions.

MR. ATKESON: I have just three questions. 14:56:00

EXAMINATION BY MR. ATKESON:

Q. Could you say what the term "nonsmoking smoker" means to you?

A. The "nonsmoking smoker" would be an individual with the same personal characteristics of a smoker, in terms of educational background, age, gender, occupation, et cetera, but who does not happen to smoke.

Q. Do you know when the surgeon general or the American Cancer Society come up with their statistics, they attribute only those diseases to smoking along the lines of a nonsmoking smoker? 14:56:30

A. I have not seen any detailed statistical studies in the surgeon general reports that would have these kinds of controls in them, so that there are lots of risks correlated with smoking status that would tend to get picked up in their 14:57:00

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statistics.

Q. So that if someone criticized the surgeon general's numbers for not doing that, you would not say that that person was incorrect?

A. No.

MR. ATKESON: No further questions.

MR. FISHER: Pass the witness.

MR. ATKESON: Thank you-all very much.

THE VIDEOGRAPHER: We're off the record.

(The deposition concluded at 2:57 p.m.)

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CORRECTIONS AND SIGNATURE

PAGE	LINE	CORRECTION	REASON FOR CHANGE

I, WILLIAM KIP VISCUSI, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

_____
WILLIAM KIP VISCUSI

SUBSCRIBED AND SWORN TO before me this the _____ day at _____, 1997.

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CERTIFICATION

I, the officer before whom the foregoing deposition was taken, do hereby certify that I personally recorded the testimony of the witness whose testimony appears in the foregoing deposition; that said deposition is a true record of the testimony given by said witness; that I am neither attorney for, related to, nor employed by any of the parties to the action in which this deposition is taken, and that I am not a relative or employee of any attorney employed by the parties hereto, or financially interested in the action.

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A.B., Harvard College, economics major, Harvard University, 6/71.

M.P.P., Public Policy Program, Kennedy School of Government, Harvard University, 6/73.

A.M., Department of Economics, Harvard University, 6/74.

Ph.D., Department of Economics, Harvard University, 11/76.

Principal Awards:

Harvard College and John Harvard Honorary Scholarships, 1967-1971.

Summa cum laude and Phi Beta Kappa, Harvard College.

Allyn A. Young Prize for best Harvard undergraduate economics honors thesis, 1970-71, Selected Topics in Public Expenditure Analysis: The Economic Evaluation of Water Resources Projects.

David A. Wells Prize for best Harvard economics Ph.D. dissertation 1975-1976, Employment Hazards: An Investigation of Market Performance.

Prize Winner in Economics of Labor Unions Essay Contest, Center for Study of Public Choice, Virginia Polytechnic Institute and State University, 1979, for "Unions, Labor Market Structure, and the Welfare Implications of the Quality of Work," Journal of Labor Research, Vol. 1, No.1 (1980).

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EXHIBIT
1
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Best Article of the Year Award, Western Economic Association, "The Quantity - Adjusted Value of Life," with Michael J. Moore, Economic Inquiry, Vol. 26, No. 3 (1988).

Kulp Award for Outstanding Original Contribution to the Literature of Risk and Insurance, American Risk and Insurance Association, book of the year, 1992, for Compensation Mechanisms for Job Risks, with Michael J. Moore.

Kulp Award for Outstanding Original Contribution to the Literature of Risk and Insurance, American Risk and Insurance Association, book of the year, 1993, for Reforming Products Liability.

Kulp Award for Outstanding Original Contribution to the Literature of Risk and Insurance, American Risk and Insurance Association, book of the year, 1994, for Fatal Tradeoffs.

Principal Full-Time Positions:

Harvard University, 1973-1976. Instructor in Public Policy, Kennedy School of Government.

Northwestern University, 1976-1980. Assistant Professor of Economics, 1976-1978; Associate Professor of Economics (with tenure), 1979-1981. On leave in the government 1979-1981.

Council on Wage and Price Stability, Executive Office of the President, Deputy Director, 1979-1981; Economic Policy Group deputy, Regulatory Analysis Review Group member.

National Commission for Employment Policy, Washington, D.C., Research Associate, 1981.

Duke University, 1981-1985. Professor of Business Administration, Fuqua School of Business (primary appointment); joint appointments in Institute of Policy Sciences, School of Law, and Department of Economics; Director of the Center for the Study of Business Regulation.

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University of Chicago, 1985-1986. Olin Visiting Research Professor of Economics, Center for the Study of the Economy and the State, Graduate School of Business.

Northwestern University, 1985-1988. Professor of Economics.

Duke University, 1988-1996. George G. Allen Professor of Economics.

Harvard Law School, 1995. Olin Visiting Professor of Law and Economics.

Harvard University, 1996-present. John F. Cogan, Jr. Professor of Law and Economics. Harvard Law School. Director of the Program on Empirical Legal Studies.

Other Professional Activities:

National Academy of Sciences, Panel on Aging and Society, member, 1978-1979.

National Bureau of Economic Research, 1978-1988; 1995-. Research Associate.

American Law Institute Project on Enterprise Liability for Personal Injury, chief economic consultant and academic working group member, 1986-1987; Associate Reporter, 1988-1991.

Brookings Institution, Civil Liability Project, member, 1986-1987; Product Liability and Innovation Project, member, 1990.

U.S. Environmental Protection Agency, Science Advisory Board Clean Air Scientific Advisory Committee: Review Subcommittee -- Acid Rain (1986)and Lead Pollution (1987), member/consultant. Member: Environmental Economics Advisory Committee (1992 - Present) and Clean Air Act Compliance Analysis Council (1992 - Present). Consultant on public smoking restrictions (1994).

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Corresponding Group on Safety Policy, Royal Society of Canada and Canadian Academy of Engineering, 1992 - present.

Adjunct Scholar, American Enterprise Institute, 1993-present.

Wharton School, Public Management External Review Committee, 1994, and Advisory Board, Risk and Decision Processes Center, 1994-present.

Editorial Positions:

Public Policy, Assistant Editor, 1974-1976.

Regulation, Contributing Editor (American Enterprise Institute), 1986-1988; Editorial Council (Cato Institute), 1989-Present.

Journal of Risk and Uncertainty, Founding Editor, 1987-present; Vol. 1-2 (with Mark Machina); Vol. 3 - present (sole editor).

International Review of Law and Economics, Associate Editor, 1987-present.

Journal of Regulatory Economics, Associate Editor, 1988-1992.

Geneva Papers on Risk & Insurance Theory, Associate Editor, 1990-present.

Book Series on Risk and Uncertainty, Kluwer Academic Publishers, Founding Editor, 1990-present.

Journal of Environmental Economics & Management, Editorial Council, 1992-present.

Journal of Risk and Insurance, Associate Editor, 1992-present.

Review of Economics and Statistics, Associate Editor, 1992-present.

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American Economic Review, Board of Editors, 1994-present.

Managerial and Decision Economics, Advisory Board, 1996-present.

Other Positions:

Center for Study of Responsive Law, report editor and co-author, Washington, D.C., 1970-1972.

Rand Corporation, Santa Monica, CA., consultant, summer 1972, 1987-1990.

Fellowships, Grants, and Government Research Contracts:

Institute of Politics, Harvard University, thesis research grant, 1970.

Kennedy School of Government, Harvard University, Administration Fellowship, 1971-1972.

National Science Foundation, Grant Fellowship, 1972-1975.

U.S. Department of Labor, Manpower Dissertation Fellowship, 1975-1976.

Project director, miscellaneous contracts and purchase orders: U.S. Dept. of Labor, OSHA, 1976-1977, 1981-1983, 1985; ASPER, 1982.

Rockefeller Foundation Grant, project director, 1978-1981.

National Commission for Employment Policy, research contracts, 1981-1983.

U.S. General Accounting Office, consulting contract 1981-1985.

National Science Foundation Grant (consumer product safety, project director), 1983-1984.

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U.S. Office of Management & Budget, consulting contract (disease compensation), 1983.

U.S. Environmental Protection Agency, Cooperative Agreement (information) project manager and principal investigator, two project periods, 1983-1986.

U.S. Environmental Protection Agency, Cooperative Agreement (enforcement of water pollution standards), project manager and principal investigator, 1984-1986.

U.S. Environmental Protection Agency, Cooperative Agreements (risk information and environmental regulation enforcement), project manager and principal investigator, two project periods, 1986-present.

U.S. Environmental Protection Agency, Cooperative Agreements (morbidity risk valuation), project manager and principal investigator, two project periods, 1987-1990.

U.S. Environmental Protection Agency, Cooperative Agreement (risk communication), project manager and principal investigator, 1988-1992.

U.S. Department of Justice, consultant and expert witness: Civil Rights Division, 1986-1987; Torts Division, 1986-1992; Land and Natural Resources Division, 1989-1992 (Exxon Valdez).

National Science Foundation Research Grant (product liability and innovation), project manager and principal investigator, 1989-1991.

Roscoe Pound Foundation Fellowship (punitive damages), co-principal investigator, 1989-1990.

National Science Foundation Research Grant (product liability insurance market), project manager and principal investigator, 1990-1992.

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U.S. Environmental Protection Agency, Cooperative Agreement, project manager and principal investigator (efficient energy pricing), 1990-1991; 1991-1993.

National Oceanic and Atmospheric Administration, consultant, 1990-1991 (oil spills).

U.S. Environmental Protection Agency, Cooperative Agreements (morbidity risk analysis, sources of individual risk), project manager and principal investigator, 1991-1995.

U.S. Environmental Protection Agency, Research Grant (risk communication), project manager and principal investigator, 1991-1993.

Executive Office of the President, consulting contract (wealth effects and risk policy analysis), 1992.

U.S. Environmental Protection Agency, Cooperative Agreement (Superfund), project manager and principal investigator, 1993-1995.

U.S. Environmental Protection Agency, Cooperative Agreements (Superfund, risk analysis, national water quality benefits, environmental subsidies, climate change) project manager and principal investigator, 1994-present.

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Principal Seminars and Honorary Lectures:

Inaugural Speaker, Geneva Risk Economics Lectures, Geneva Association for Risk and Insurance, "Social Insurance for Work and Product Injuries," Paris, 1989.

John R. Commons Lecture, Third Annual Lecture, "Lessons from Workers' Compensation for Tort Liability Reform," University of Wisconsin - Madison, 1990.

Faculty Member, George Mason Law School Programs for Federal Judges, Science and Liability (1991, 1992, 1993, 1996), Product Liability (1992, 1993, 1994, 1996).

Keynote Speaker, European Association of Environmental and Resource Economists, (EAERE), Fourth Annual Conference, Paris, 1993.

Smith Endowed Chair of Economics Lectures, Brigham Young University, 1993.

Keynote Speaker, Australian Conference on Risk, Regulation, and Responsibility, Institute for Public Affairs and Australian National University, Sydney, 1995.

Faculty Member, University of Kansas Law School Program for State Judges -- torts, crimes, and deterrence; cost-benefit analysis and risk assessment, and labor markets (1995, 1996).

Arne Ryde Lectures, University of Lund, Sweden, May 1996.

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BOOKS:

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2. Welfare of the Elderly: An Economic Analysis and Policy Prescription, (New York: Wiley-Interscience, 1979).

3. Employment Hazards: An Investigation of Market Performance, Harvard Economic Studies No. 148 (Cambridge: Harvard University Press, 1979). Winner of the David Wells Prize for outstanding economics dissertation, Harvard University.

4. Risk by Choice: Regulating Health and Safety in the Workplace (Cambridge: Harvard University Press, 1983).

5. Regulating Consumer Product Safety (Washington: American Enterprise Institute, 1984), in hardcover and paperback.

6. Learning about Risk: Consumer and Worker Responses to Hazard Information, principal author with Wesley A. Magat (Cambridge: Harvard University Press, 1987).

Compensation Mechanisms for Job Risks: Wages, Workers' Compensation and Product Liability, with Michael J. Moore (Princeton: Princeton University Press, 1990). Winner of Kulp Memorial Award, best book of 1992, American Risk and Insurance Association.

Enterprise Responsibility for Personal Injury -- Reporters' Study, Vol. I: The Institutional Framework and Vol. II: Approaches to Legal and Institutional Change, Associate Reporter, with Paul Weiler, et al. (Philadelphia: American Law Institute, 1991).

9. Reforming Products Liability (Cambridge: Harvard University Press, 1991). Winner of Kulp Memorial Award, best book of 1993, American Risk and Insurance Association.

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10. Economics of Regulation and Antitrust, with John Vernon and Joseph E. Harrington, Jr. (Lexington: D.C. Heath & Co, 1992), Second Edition (Cambridge: MIT Press, 1995).

11. Informational Approaches to Regulation, Regulation of Economic Activity Series No. 19, with Wesley A. Magat (Cambridge: MIT Press, 1992).

12. Fatal Tradeoffs: Public and Private Responsibilities for Risk (New York: Oxford University Press, 1992). Winner of the Kulp Memorial Award, best book of 1994, American Risk and Insurance Association; paperback edition, 1995.

13. Smoking: Making the Risky Decision (New York: Oxford University Press, 1992).

14. Product-Risk Labeling: A Federal Responsibility (Washington: American Enterprise Institute, 1993).

15. The Mortality Costs of Regulatory Expenditures, editor (Boston: Kluwer Academic Publishers, 1994).

FORTHCOMING BOOKS:

16. A Course in Risk, 1996 Lund University Arne Ryde Lectures (Oxford: Oxford University Press).

17. Environmentally Responsible Energy Pricing, principal author, in collaboration with R. Boyd, A. Carlin, M. Dreyfus, K, Krutilla and N. Magat (Boston: Kluwer Academic Publishers).

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2. "Insuring the Expropriation Risks of Multinational Firms," with R. Michael Allen, Stanford Journal of International Studies, Vol. 11 (Spring 1976), pp. 153-168.

3. "Environmental Policy Choice under Uncertainty," with Richard J. Zeckhauser, Journal of Environmental Economics and Management, Vol. 3, No. 2 (August 1976), pp. 97-112.

4. "The Role of Social Security in Income Maintenance," with Richard J. Zeckhauser, in M. Boskin, ed., The Crisis in Social Security: Problems and Prospects (San Francisco: Institute for Contemporary Studies, 1977), pp. 41-64.

5. "A Note on 'Lemons' Markets with Quality Certification," Bell Journal of Economics, Vol. 9, No. 1 (Spring 1978), pp. 277-279.

6. "Labor Market Valuations of Life and Limb: Empirical Evidence and Policy Implications," Public Policy, Vol. 26, No. 3 (Summer 1978), pp. 359-386. Reprinted in E. Stromsdorfer and G. Farkas, eds., Evaluation Studies Review Annual, Vol. 5 (Beverly Hills: Sage Publications, 1980), pp. 547-574.

7. "Wealth Effects and Earnings Premiums for Job Hazards," Review of Economics and Statistics, Vol. 60, No. 3 (Aug. 1978), pp. 408-416.

8. "Job Hazards and Worker Quit Rates: An Analysis of Adaptive Worker Behavior," International Economic Review, Vol. 20, No. 1 (Feb. 1979), pp. 29-58.

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9. "The Impact of Occupational Safety and Health Regulation," Bell Journal of Economics, Vol. 10, No. 1 (Spring 1979), pp. 117-140.

10. "Optimal Standards with Incomplete Enforcement," with Richard J. Zeckhauser, Public Policy, Vol. 26, No. 4 (Fall 1979), pp. 437-456.

11. "Insurance and Individual Incentives in Adaptive Contexts," Econometrica, Vol. 47, No. 6 (Sept. 1979), pp. 1295-1308.

12. "Unions, Labor Market Structure, and the Welfare Implications of the Quality of Work," Journal of Labor Research, Vol. 1, No. 1 (Spring 1980), pp. 175-192. Prize winner in Economics of Trade Unions Essay Contest, Virginia Polytechnic Institute and State University.

13. "A Theory of Job Shopping: A Bayesian Perspective," Quarterly Journal of Economics, Vol. 94, No. 3 (May 1980), pp. 604-614.

14. "Sex Differences in Worker Quitting," Review of Economics and Statistics, Vol. 62, No. 3 (Aug. 1980), pp. 386-398.

15. "Self-Selection, Learning-Induced Quits, and the Optimal Wage Structure," International Economic Review, Vol. 21, No. 3 (Oct. 1980), pp. 529-546.

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17. "National Health Insurance and Mandated Employee Benefits: Discussion," in M. Pauly, ed., National Health Insurance (Washington: American Enterprise Institute, 1980), pp. 80-82.

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24. "Turnover and Unemployment: Discussion," in R. Freeman and D. Wise, eds., NBER Conference Volume, The Youth Employment Problem: Its Nature, Causes, and Consequences (Chicago: University of Chicago Press, 1982), pp. 271-275.

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26. "Presidential Oversight: Controlling the Regulators," Journal of Policy Analysis and Management, Vol. 2, No. 2 (Winter 1983), pp. 157-173.

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28. "The Political Economy of Wage and Price Regulation: The Case of the Carter Pay-Price Guidelines," in R. Zeckhauser and D. Leebaert, eds., What Role for the Government? (Durham: Duke University Press, 1983), pp. 155-174, 339-341.

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37. "Regulating Uncertain Health Hazards When There Is Changing Risk Information," Journal of Health Economics, Vol. 3, No. 3 (December 1984), pp. 259-274.

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